



SOUTH AUSTRALIA POLICE
KEEPING SA SAFE

FIREARMS BRANCH

FIREARMS (MISCELLANEOUS) AMENDMENT ACT 2013

FIREARMS VARIATION REGULATIONS 2014

*Amending the *Firearms Act 1977* and *Firearms Regulations 2008**

INFORMATION GUIDE

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1 AMENDMENTS TO THE FIREARMS ACT 1977

The *Firearms (Miscellaneous) Act 2013* and *Firearms Variation Regulations 2014* provide a raft of amendments to the Firearms Act 1977, set out and explained below, with a summary of major reforms tabled at page 11 in **APPENDIX A**.

1.1 Amendment of section 5 – Interpretation

Section 5(1) has been amended by:

- the insertion of a new definition of ***prohibited firearm accessory***; and
- the substitution of the definition of ***silencer***.

The definition of ***prohibited firearm accessory*** inserted into section 5(1) of the Act operates in conjunction with the newly created section 29B of the Act and Regulation 4A of the *Firearm Regulations 2008* (the Regulations). For further information on ***prohibited firearm accessories*** refer to pages 6 and 9 below.

The section 5(1) ***definition of silencer*** has been deleted and ***substituted*** with a new definition. The significant change to the definition is that a silencer now includes devices ***adapted*** to be attached to or comprising part of a firearm to muffle the report when fired. This creates a ***prohibition on adapted silencers*** (e.g. devices designed for other purposes but adapted to become a silencer).

1.2 Amendment of section 10B – Firearms Prohibition Order Issued by Registrar

Section 10B has been amended by the ***insertion of subsection (3a)*** to provide a police officer who has reason to believe an unserved firearms prohibition order applies to a person with a power to require the person to remain at a particular place for up to 2 hours to effect service of the order. Where a person refuses or fails to comply with the requirement to remain at a particular place, or if a police officer believes on reasonable grounds that the requirement will not be complied with, police have the authority to arrest and detain the person (without warrant) for up to 2 hours in order to effect service of the order.

1.3 Amendment of section 11 – Possession and Use of Firearms

Section 11 creates offences for persons who possess a firearm without holding an appropriate firearms licence and for licensees who possess or use a firearm for a purpose not authorised by his/her licence. Subsection 11(7b)(a) previously

provided that an offence against section 11 would be **aggravated** if it is proved that the offender was **carrying** a loaded firearm or a firearm and a loaded magazine that can be attached to and used in conjunction with the firearm. Subsection 11(7b)(a) has been amended removing the element of **carriage** and making the offence now aggravated if the firearm is loaded, or in the immediate vicinity of a loaded magazine that could be attached to and used in conjunction with the firearm, irrespective of whether the firearm was being physically carried at the time.

1.4 Substitution of sections 14 and 14A – Section 14 Trafficking in Firearms

Sections 14 (Acquisition of Firearms) and 14A (Supply of firearms) of the Act have been deleted and substituted with a **new section 14**, creating an offence of **trafficking in firearms**. A person who unlawfully acquires a firearm, unlawfully supplies a firearm or knowingly takes part in the unlawful acquisition or supply of a firearm commits the offence of trafficking in firearms.

New section 14 contains one further reform to the previous subsections 14(3)(c) and 14A(3)(c) provisions which provided defences to charges of unlawfully acquiring or supplying a firearm. These defences, now consolidated into new subsection 14(3)(d), have been amended so that the owner of a class A, B or H firearm (of or below .38 calibre) who lawfully **loans** his/her firearm to another person **for up to 28 days, not the previously permitted 10 days**, for purposes specified in a written agreement between the two, and without a permit to acquire the firearm, will have a defence to a charge of trafficking in firearms.

1.5 Amendment of section 27 – Manufacture of Firearms, Firearm Parts or Silencers

Section 27 is amended to now include offences of **manufacturing a silencer or taking part in the manufacture of a silencer**.

1.6 Insertion of section 27AA – Alteration of Firearms

Section 27AA is a new section creating several new offences.

Subsection 27AA(1)(a) makes it an offence for a person, without the written approval of the Registrar, to reactivate a deactivated firearm so that the deactivated firearm becomes capable of being used as a firearm.

Section 27AA(2) creates an offence of attempting to reactivate a deactivated firearm.

Subsection 27AA(1)(b) makes it an offence for a person, without the written approval of the Registrar, to alter a firearm in a way that makes it become a firearm of a different class e.g. where a long arm is shortened to the length of a handgun.

Section 27AA(2) creates an offence of attempting to alter the class of a firearm.

1.7 Insertion of section 27AAB – Seizure and Forfeiture of Equipment

New section 27AAB provides authorities dealing with equipment used or intended for use, for or in connection with the unlawful manufacture of firearms, firearm parts or silencers (section 27), and the unlawful alteration of firearms (section 27AA).

27AAB(1) provides an authority permitting a police officer who **suspects on reasonable grounds** that an offence against section 27 or 27AA has been committed, is being committed or will be committed to seize any equipment, device, object or document **reasonably suspected** of being used, or intended for use, for, or in connection with, the commission of the offence.

Section 27AAB(2) provides an authority for the Registrar of Firearms to institute court proceedings for the forfeiture of seized items.

Section 27AAB(3) provides that where a court is satisfied that seized items were used or intended for use for, or in connection with, the commission of an offence against section 27 or 27AA, the court may order that the seized items be forfeited to the Crown, or make such other order for the disposal of the seized items as it thinks appropriate.

Section 27AAB(4) provides that where a court finds a person guilty of an offence against section 27 or 27AA and finds that seized items were involved in the commission of the offence, the court may order the seized items be forfeited to the Crown or be disposed of as the court directs.

Section 27AAB(5) provides that a police officer who **suspects on reasonable grounds** that an item has been forfeited to the Crown by order of a court may seize that item.

Section 27AAB(6) provides that seized items may be held for up to 12 months whilst section 27 or 27AA offence proceedings are being instituted or a decision is made not to institute proceedings. Where proceedings are instituted within 12 months seized items may be held until those proceedings are finally determined.

1.8 Amendment of section 29A – Possession etc of Silencer and Certain Parts of Firearms

Section 29A(1) has been amended to make it an offence to **acquire and own** a silencer.

Sections 29A (2b), (2c) and (2d) create **aggravated forms of offending** so that where a silencer, mechanism or other fitting to which the offence relates is fitted to a firearm; or the offender has physical possession or control of the silencer, mechanism or other fitting together with a firearm an aggravated offence is committed.

Note that the amended section 5(1) silencer definition creates a prohibition on adapted silencers. Members of the public can voluntarily surrender these items at a police station between 7 February 2014 and 30 June 2014.

Note adapted silencers should only be presented at a police station during daylight hours, must be securely boxed, bagged, or wrapped and bound prior to arrival, and may only be removed from the covering by a police officer.

Note that no charges will be laid in respect to adapted silencers surrendered at a police station during the grace period.

1.9 Insertion of section 29B – Possession etc of Prohibited Firearm Accessory

Section 29B is a new section that creates offences regarding the **ownership, acquisition and possession of a prohibited firearm accessory**.

Prohibited firearm accessories are **prescribed in Regulation 4A of the Regulations**. These accessories include items that can be attached to, or be used in conjunction with, a firearm so as to affect the appearance or operation of the firearm, such as kits that attach to handguns to give them the appearance of being a firearm of a different class or of a different firing capability.

Section 29B creates **basic and aggravated offences**. An offence will be aggravated when a prohibited firearm accessory is fitted to a firearm or when an offender has physical possession or control of a prohibited firearm accessory together with a firearm.

Note that these provisions create a prohibition on certain firearm accessories. Between 7 February and 30 June 2014 there will be a **grace period** during which prohibited firearm accessories can be surrendered at a police station.

Note accessories should only be presented at a police station during daylight hours, must be securely boxed, bagged, or wrapped and bound prior to arrival, and may only be removed from the covering by a police officer.

Note that regulation 4A of the *Firearms Regulations 2008* – concerning prohibited firearm accessories - **will not be enforced until after 30 June 2014.**

Note that no charges will be laid in respect to prohibited firearm accessories surrendered to police, or seized by police as part of normal business, during the grace period. Any prohibited firearm accessory seized by or surrendered to police will not be destroyed until after 30 June.

1.10 Amendment of section 32 – Power to Inspect or Seize Firearms etc

Subsection 32(1aa) has been deleted and substituted with a ***new subsection 32(1aa)*** to the effect that the police authority to seize firearms, mechanisms or fitting suspected of being possessed in contravention of the Act has been ***amended to now also apply to firearm parts, silencers and prohibited firearm accessories.***

A ***new subsection 32(1ac)*** has been inserted providing police authority to ***seize a firearm, firearm part or ammunition suspected of being possessed in contravention of a number of statutory instruments*** such as bail agreements, bonds and licences.

Subsection 32(2)(a) has been amended to the effect that the police authority to stop, detain and search a ***vehicle*** upon which there is suspected to be a firearm, licence, mechanism, fitting or ammunition liable to seizure has been ***now applies to searches of vessels and aircraft.***

Subsection 32(2)(a) has been ***further amended, along with subsection 32(2)(b)*** (stopping, detaining and searching of persons) ***to now apply to searches for firearm parts, silencers and prohibited firearm accessories.***

Subsection 32(3)(a) has been amended to the effect that the police authority to break into, enter and search a premises in which police suspect there to be a firearm, licence, mechanism, fitting or ammunition liable to seizure ***now applies to searches for firearm parts, silencers and prohibited firearm accessories.***

Subsection 32(3a) has been amended to the effect that the police authority to detain a person, stop and detain a vehicle, vessel or aircraft and enter premises to conduct a search for various items for the purpose of ensuring compliance with a firearms prohibition order issued by the Registrar of Firearms has been ***amended to now apply to firearms prohibition orders to which a person is subject by order of a court.*** This subsection is further amended by ***deleting its***

applicability to searches for mechanisms or fittings and making it applicable to searches for firearm parts.

Subsection 32(3b)(a) has been amended to the effect that the police authority to detain and search a person reasonably suspected to be a person to whom a firearms prohibition order issued by the Registrar of Firearms applies ***now also applies to a person reasonably suspected to be a person subject to a firearms prohibition order of a court.***

New subsection 32(3c) sets out that ***police may utilise such assistance*** as considered appropriate and ***using such reasonable force*** as necessary ***to break to gain entry and search and when breaking into or opening anything*** in or on a premises, vehicle, vessel or aircraft.

Section 32(4) has been amended to direct that any seized firearm part, silencer or prohibited firearm accessory must be forwarded forthwith to the Registrar of Firearms.

1.11 Amendment of section 34 – Forfeiture of Firearms etc

The ***section 34(1)*** authority that the Registrar of Firearms may institute proceedings before a court of summary jurisdiction for forfeiture of a seized firearm, mechanism, fitting or ammunition is ***amended to now also apply to instituting proceedings for the forfeiture of a seized firearm part.***

The ***section 34(2)*** authority that a court may order forfeiture or disposal of a firearm, mechanism, fitting or ammunition is ***amended to now also apply to a court order for forfeiture or disposal of a firearm part.***

Section 34(2) is further amended by the insertion of new subsection ***34(2)(ab)*** that provides that a ***court may order forfeiture or disposal if satisfied that the owner*** of a firearm, firearm part, mechanism, fitting or ammunition ***is prohibited from possessing the item under another Act.***

Section 34(3) provides that seized mechanisms, fittings or ammunition may be held for up to 12 months whilst proceedings for a court order are being instituted or a decision is made not to institute proceedings. Where proceedings are instituted within 12 months, seized items may be held until those proceedings are finally determined. ***Section 34(3) is amended to also apply to seized firearm parts.***

1.12 Amendment of section 34A – Powers of Court on Finding Person Guilty of Firearms Offence

Sections 34A(1) and (2) outline various orders that a court may make where in proceedings the court finds a person guilty of an offence against the Firearms Act 1977 or any other Act where a firearm, mechanism, fitting or ammunition was involved in the commission of the offence, or where the court forms the view that a party to the proceedings who has possession of a firearm, mechanism, fitting or ammunition is not a fit and proper person to have continued possession. **Sections 34A(1) and (2) is amended to apply to firearm parts.**

Section 34A(3) has been deleted and substituted with a **new section 34A(3)** that provides that if a court makes an order that a person is subject to a firearms prohibition order, the order operates as a firearms prohibition order in force under Part 2A of the Act.

1.13 Amendment of section 35 – Disposal of Forfeited or Surrendered Firearms etc

Section 35(1) provides that the Registrar of Firearms may sell or otherwise dispose of a firearm, mechanism, fitting or ammunition forfeited to the Crown under the Firearms Act 1977 or any other Act. **Section 35(1) is amended to now also be applicable to forfeited firearm parts.**

2 AMENDMENTS TO THE FIREARMS REGULATIONS 2008

The *Firearms Variation Regulations 2014* amend the *Firearms Regulations 2008* by the insertion of two new Regulations set out and explained below.

2.1 Insertion of regulation 4A – Prohibited Firearm Accessories

A **new regulation 4A has been inserted** for the purposes of the definition of **prohibited firearm accessory** in section 5(1) of the Act, setting out two classes of prohibited items, namely:

- Items that enable a firearm to have an automatic or other similar type firing capability;
- Items that give a firearm the appearance of being of a different class or firing capability;

Regulation 4A(1)(a) prescribes items that can be attached or fitted to a firearm to alter its firing operation or capability.

An example of a specific prohibited firearm accessory is a bump-fire stock that utilises the recoil of a firearm to facilitate rapid depressions of the trigger allowing numerous rounds of ammunition to be discharged in quick succession.

Regulation 4A(1)(b) prescribes items that can be fitted to or used in conjunction with a firearm to give it the appearance of being of a different class to its manufacture or of an automatic or prescribed firearm. They include firearm kits such as those known as pistol carbine conversion kits.

Regulation 4A applies to dangerous accessories which can compromise public safety or cause alarm within the community. Regulation 4A does not apply to safe, ordinary and widely used firearm accessories such as scopes and sights.

2.2 Insertion of regulation 9A – Exemption for Certain Persons Transferring or Borrowing Firearms

A **new regulation 9A has been inserted** for administrative purposes to redress unintended conflict arising between new section 14(3)(d) of the Act and provisions of section 15B(1)(b) and (8) of the Act in relation to the loaning of class A, B or H firearms (up to .38 calibre) between an owner and a borrower.

Regulation 9A prescribes an exemption so that in appropriate circumstances an owner can lawfully transfer possession of a class A, B or H firearm by loaning it to a borrower, upon a written agreement between the two, for **up to 28 days** without fear of criminal sanction.

As set out earlier at page 10, the **new subsection 14(3)(d)** of the Act provides a defence to a charge of trafficking in firearms for parties subject to a lawfully observed transfer of possession of a class A, B or H firearm, without a permit to acquire the firearm, by loan for up to **28 days**. **The previous loan period was restricted to 10 days.**

When the amendment extending the section 14(3)(d) loan period to 28 days occurred, identical amendments should have been made to sections **15B(1)(b) and 15B(8)**, which deal with the transfer of possession of a class A, B or H firearm, for uniformity. Identical amendments were not made causing an inconsistency between sections 14(3)(d) which now prescribes a defence based upon a **28 day loan period** and 15B(1)(b) and (8) prescribing loan requirements based on a **10 day loan period**. This inconsistency has necessitated the prescribing of the **regulation 9A exemption**.

Note that the **regulation 9A exemption** only relates to **section 15B written loan agreements** and not section 15B oral loan agreements which remain

limited to periods of 10 days. **Note further** that the *regulation 9A exemption* for written loan agreements only applies if other requirements of section 15B in relation to transfer of possession of firearms are observed. These requirements include there being an agreement between the lender and borrower and that the borrower holds the appropriate license for the firearms borrowed.

3 APPENDIX A

MAJOR REFORMS OF THE FIREARMS (MISCELLANEOUS) AMENDMENT ACT 2013 AND FIREARMS VARIATION REGULATIONS 2014		
NATURE OF REFORM	AMENDING REFERENCE	NEW LEGISLATIVE REFERENCE
Aggravated offence of possession / use of a loaded firearm	Section 7 Firearms (Miscellaneous) Amendment Act 2013	Section 11(7)(b)(a) Firearms Act 1977
Offence of trafficking in firearms	Section 9 Firearms (Miscellaneous) Amendment Act 2013	Section 14 Firearms Act 1977
Offence of manufacture a silencer	Section 11 Firearms (Miscellaneous) Amendment Act 2013	Section 27(1) Firearms Act 1977
Offences of reactivating, and attempting to reactivate, a deactivated firearm	Section 12 Firearms (Miscellaneous) Amendment Act 2013	Section 27AA(1)(a) and (2) Firearms Act 1977
Offences of altering, and attempting to alter, a firearm so that as a result the firearm becomes a firearm of a different class	Section 12 Firearms (Miscellaneous) Amendment Act 2013	Section 27AA(1)(b) and (2) Firearms Act 1977
Offences to own, acquire or possess a prohibited firearm accessory	Section 4 Firearms (Miscellaneous) Amendment Act 2013 Section 14 Firearms (Miscellaneous) Amendment Act 2013 Section 4 Firearms Variation Regulations 2014	Section 29B Firearms Act 1977 Section 5(1) Firearms Act 1977 Regulation 4A Firearms Regulations 2008
Aggravated penalty provision for the offence of possession of a silencer	Section 13 Firearms (Miscellaneous) Amendment Act 2013	Section 29A(2c) Firearms Act 1977
Aggravated penalty provision for the offence of acquiring, owning or possessing a mechanism or other fitting that can convert a firearm to an automatic firearm, or enable a firearm to fire grenades or other explosive projectiles	Section 13 Firearms (Miscellaneous) Amendment Act 2013	Section 29A(2)(d) Firearms Act 1977
Authorities permitting police to require a person to remain at a particular place for up to 2 hours in order to serve a Firearms Prohibition Order, and to arrest and detain the person for up to 2 hours if the person fails to comply with the requirement or if police have reasonable grounds to believe the requirement will not be complied with	Section 5 Firearms (Miscellaneous) Amendment Act 2013	Section 10B(3a) Firearms Act 1977
Authorities permitting police to seize, and seek Court forfeiture of, equipment used for, or intended to be used for, the unlawful manufacture or alteration of firearms, firearms parts and silencers	Section 12 Firearms (Miscellaneous) Amendment Act 2013	Section 27AAB Firearms Act 1977
Authority permitting police to seize firearm parts, silencers or prohibited firearm accessories suspected of being possessed in contravention of the Act	Section 15 Firearms (Miscellaneous) Amendment Act 2013	Section 32(1aa) Firearms Act 1977
Authority permitting police to seize a firearm, firearm part or ammunition suspected of being possessed in contravention of a number of statutory instruments	Section 15 Firearms (Miscellaneous) Amendment Act 2013	Section 32(1ac) Firearms Act 1977
Authority permitting police to search vessels and aircraft for a firearm, licence, mechanism, fitting, ammunition, firearm part, silencer or prohibited firearm accessory liable to seizure	Section 15 Firearms (Miscellaneous) Amendment Act 2013	Section 32(2)(a) Firearms Act 1977
Authority permitting police to search vehicles for a firearm part, silencer or prohibited firearm accessory liable to seizure	Section 15 Firearms (Miscellaneous) Amendment Act 2013	Section 32(2)(a) Firearms Act 1977
Authority permitting police to stop, detain and search a person suspected of having possession of a firearm part, silencer or prohibited firearm accessory liable to seizure	Section 15 Firearms (Miscellaneous) Amendment Act 2013	Section 32(2)(b) Firearms Act 1977
Authority permitting police to break into, enter and search a premises for a firearm part, silencer or prohibited firearm accessory liable to seizure	Section 15 Firearms (Miscellaneous) Amendment Act 2013	Section 32(3)(a) Firearms Act 1977
Authorities permitting police to detain a person, stop, detain, break into and enter a vehicle, vessel or aircraft or break into and enter premises to conduct a search for a firearm, firearm part, licence, mechanism, fitting or ammunition liable to seizure in order to ensure compliance with a Firearms Prohibition Order issued by the Registrar of Firearms or a Court	Section 15 Firearms (Miscellaneous) Amendment Act 2013	Section 32(3a) Firearms Act 1977
Authority permitting police to break into and enter any premises, vehicle, vessel or aircraft to conduct a search authorised by section 32 of the Act	Section 15 Firearms (Miscellaneous) Amendment Act 2013	Section 32(3c)(a) Firearms Act 1977
Authority permitting police to use such assistance and reasonable force as necessary when breaking into and entering a vehicle, vessel, aircraft or premises to conduct a search authorised by section 32 of the Act	Section 15 Firearms (Miscellaneous) Amendment Act 2013	Section 32(3c) Firearms Act 1977
Authority permitting police to break into or open anything in or on a vehicle, vessel, aircraft or premises when conducting a search authorised by section 32 of the Act	Section 15 Firearms (Miscellaneous) Amendment Act 2013	Section 32(3c)(b) Firearms Act 1977
Provision permitting an owner of a class A, B or H firearm (of or below .38 calibre) to transfer possession of a firearm (loan) to a borrower for up to 28 days, for purposes specified in a written agreement between the two, without a permit to acquire the firearm, and providing a defence to a charge of trafficking in firearms	Section 9 Firearms (Miscellaneous) Amendment Act 2013 Section 5 Firearms Variation Regulations 2014	Section 15B(1)(b) Firearms Act 1977 Section 15B(8) Firearms Act 1977 Section 14(3)(d) Firearms Act 1977 Regulation 9A Firearms Regulations 2008
Prohibition on devices 'adapted' to be a silencer	Section 4 Firearms (Miscellaneous) Amendment Act 2013	Section 5(1) Firearms Act 1977