

South Australia

# Firearms (Miscellaneous) Amendment Act 2013

An Act to amend the *Firearms Act 1977*.

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**The Parliament of South Australia enacts as follows:**

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Firearms (Miscellaneous) Amendment Act 2013*.

#### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Firearms Act 1977*

### 4—Amendment of section 5—Interpretation

- (1) Section 5(1), after the definition of *prescribed firearm* insert:

*prohibited firearm accessory* means an item, or an item of a class, prescribed by the regulations that may be fitted to or used in conjunction with a firearm;

- (2) Section 5(1), definition of *silencer*—delete the definition and substitute:

*silencer* means a device designed or adapted to be attached to, or comprising part of, a firearm to muffle the report when the firearm is fired and includes baffles, tubes or other parts that when fitted together would comprise a silencer;

### 5—Amendment of section 10B—Firearms prohibition order issued by Registrar

Section 10B—after subsection (3) insert:

- (3a) If a police officer has reason to believe that a firearms prohibition order applies to a person, but the order has not been served on the person, the officer may—
- (a) require the person to remain at a particular place for—
    - (i) so long as may be necessary for the order to be served on the person; or
    - (ii) 2 hours,whichever is the lesser; and
  - (b) if the person refuses or fails to comply with the requirement or the officer has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (a).

### 6—Substitution of heading to Part 3

Heading to Part 3—delete the heading and substitute:

## **Part 3—Possession and trafficking of firearms and licensing of dealers**

## **7—Amendment of section 11—Possession and use of firearms**

(1) Section 11(7b)—delete subsection (7b) and substitute:

(7b) An offence against this section is an aggravated offence if it has been proved that—

- (a) the firearm to which the offence relates was loaded or in the immediate vicinity of a loaded magazine that could be attached to and used in conjunction with the firearm; or
- (b) the offender had the firearm concealed about the person.

(2) Section 11(7c)—delete subsection (7c)

## **8—Substitution of heading to Part 3 Division 2**

Heading to Part 3 Division 2—delete the heading and substitute:

### **Division 2—Trafficking in firearms**

## **9—Substitution of sections 14 and 14A**

Sections 14 and 14A—delete the sections and substitute:

### **14—Trafficking in firearms**

(1) Subject to this section, a person—

- (a) who—
  - (i) acquires a firearm; or
  - (ii) knowingly takes part in the acquisition of a firearm, without being authorised to acquire the firearm by a permit under this Part (or under corresponding legislation in another State or Territory of the Commonwealth); or
- (b) who—
  - (i) supplies a firearm; or
  - (ii) knowingly takes part in the supply of a firearm, to a person who is not authorised to acquire the firearm by a permit under this Part (or under corresponding legislation in another State or Territory of the Commonwealth),

is guilty of the offence of trafficking in firearms.

(2) Subsection (1) does not apply to—

- (a) the acquisition of a firearm by a person in the ordinary course of carrying on business as a licensed dealer pursuant to the licence; or
- (b) the supply of a firearm to a person who acquires the firearm in the ordinary course of carrying on business as a licensed dealer pursuant to the licence.

- (3) It is a defence to prosecution for an offence against subsection (1) to prove that—
- (a) the acquisition or supply was in circumstances (prescribed by or under section 11) in which the person who acquired the firearm was not required to hold a licence authorising possession of the firearm; or
  - (b) in the case of the acquisition of a firearm—the owner of the firearm carried on a business and the firearm was temporarily acquired for the purposes of the business from the owner by a person who was—
    - (i) the holder of a licence authorising the possession and use of the firearm; and
    - (ii) an employee, or in the case of a primary production business, a relative, of the owner; or
  - (c) in the case of the supply of a firearm—the owner of the firearm carried on a business and the firearm was temporarily supplied for the purposes of the business by the owner to a person who was—
    - (i) the holder of a licence authorising the possession and use of the firearm; and
    - (ii) an employee, or in the case of a primary production business, a relative, of the owner; or
  - (d) in the case of a class A or B firearm or, subject to subsection (4), a class H firearm, the acquisition or supply was pursuant to a written agreement between the owner of the firearm and the person who acquired the firearm that the person would only use the firearm for a purpose or purposes specified in the agreement and would return the firearm to the owner within 28 days; or
  - (e) the acquisition or supply was in circumstances prescribed for the purposes of this subsection by regulation.
- (4) The defence under subsection (3)(d) is not available in the case of a class H firearm—
- (a) if—
    - (i) the person who acquired the firearm was the holder of a shooting club member's licence; and
    - (ii) the firearm—
      - (A) is a self-loading handgun (other than a revolver) with a barrel length, as measured in accordance with the regulations, of less than 120 mm; or

- (B) is a revolver or single shot handgun in either case with a barrel length, as measured in accordance with the regulations, of less than 100 mm; or
    - (C) has a magazine or cylinder capacity of more than 10 rounds or a modified magazine or cylinder capacity; or
    - (D) is of more than .38 calibre; or
  - (b) if the person who acquired the firearm was the holder of a shooting club member's licence and had held the licence for less than 6 months; or
  - (c) if—
    - (i) the person who acquired the firearm was the holder of a shooting club member's licence and had held the licence for 6 months or more but less than 12 months; and
    - (ii) acquisition of the firearm resulted in the person having possession of a class H firearm or class H firearms other than—
      - (A) one .177 calibre air pistol or one .22 calibre rim fire handgun (long rifle or short) or one centre fire handgun; or
      - (B) one .177 calibre air pistol and one .22 calibre rim fire handgun (long rifle or short); or
      - (C) one .177 calibre air pistol and one centre fire handgun.
- (5) For the purposes of this section—
  - (a) a person takes part in the acquisition of a firearm if—
    - (i) the person takes, or participates in, any step, or causes any step to be taken, in the process of acquisition of the firearm; or
    - (ii) the person provides or arranges finance for any step in that process; or
    - (iii) the person provides the premises in which any step in that process is taken, or suffers or permits any step in that process to be taken in premises of which the person is an owner, lessee or occupier or of which the person has care, control or management; and
  - (b) a person takes part in the supply of a firearm if—

- (i) the person takes, or participates in, any step, or causes any step to be taken, in the process of supply of the firearm; or
  - (ii) the person provides or arranges finance for any step in that process; or
  - (iii) the person provides the premises in which any step in that process is taken, or suffers or permits any step in that process to be taken in premises of which the person is an owner, lessee or occupier or of which the person has care, control or management.
- (6) Subject to this section, the maximum penalty for a first offence against this section that involves only 1 firearm is as follows:
  - (a) if the firearm is a prescribed firearm—\$75 000 or imprisonment for 15 years;
  - (b) if the firearm is a class C, D or H firearm—\$50 000 or imprisonment for 10 years;
  - (c) if the firearm is any other kind of firearm—\$35 000 or imprisonment for 7 years.
- (7) Subject to this section, the maximum penalty for—
  - (a) a first offence against this section that involves more than 1 firearm; or
  - (b) a subsequent offence against this section,is imprisonment for 20 years.
- (8) In determining whether an offence against this section is a first or subsequent offence for the purposes of subsection (6) or (7), a court must treat—
  - (a) a previous offence against section 14 or 14A of this Act (as in force from time to time before the commencement of this section), or an offence against a corresponding previous enactment, substantially similar to the offence in subsection (1); and
  - (b) a previous offence involving the unlawful acquisition or supply of a firearm against corresponding legislation in another State or Territory of the Commonwealth (whether committed before or after the commencement of this section),as a previous offence.
- (9) A person who has not previously been found guilty of an offence against this section may, at the discretion of the prosecutor, be prosecuted for a summary offence against this section except where the offence involves a prescribed firearm, but on conviction of a summary offence against this section the maximum penalty is \$10 000 or imprisonment for 2 years.

## 10—Insertion of heading to Part 3 Division 2AA

Before section 15 insert:

### **Division 2AA—Permit for acquisition of firearm**

## 11—Amendment of section 27—Manufacture of firearms, firearm parts or silencers

- (1) Section 27(1)—delete "or firearm part" wherever occurring and substitute in each case:

, firearm part or silencer

- (2) Section 27(4)—delete "or firearm part" wherever occurring and substitute in each case:

, firearm part or silencer

- (3) Section 27(5)—delete subsection (5) and substitute:

- (5) Subject to subsection (6), the maximum penalty for an offence against this section is as follows:

- (a) in the case of a firearm or firearm part—

- (i) if the firearm is a prescribed firearm or the firearm part is a firearm part for a prescribed firearm—\$75 000 or imprisonment for 15 years;
- (ii) if the firearm is a class C, D or H firearm or the firearm part is a firearm part for a class C, D or H firearm—\$50 000 or imprisonment for 10 years;
- (iii) if the firearm or firearm part is any other kind of firearm or firearm part—\$35 000 or imprisonment for 7 years;

- (b) in the case of a silencer—\$35 000 or imprisonment for 7 years.

## 12—Insertion of sections 27AA and 27AAB

After section 27 insert:

### **27AA—Alteration of firearms**

- (1) A person who, without the written approval of the Registrar—

- (a) alters a firearm that has been rendered unusable so that, as a result of the alteration, the firearm becomes capable of being used as a firearm; or
- (b) alters a firearm so that, as a result of the alteration, the firearm becomes a firearm of a different class,

is guilty of an offence.

Maximum penalty:

- (a) if the firearm as altered is a prescribed firearm—\$75 000 or imprisonment for 15 years;

- (b) if the firearm as altered is a class C, D or H firearm—  
\$50 000 or imprisonment for 10 years;
  - (c) if the firearm as altered is any other class of firearm—  
\$35 000 or imprisonment for 7 years.
- (2) A person who attempts to commit an offence against subsection (1) is guilty of the offence of attempting to commit that offence.  
Maximum penalty: \$15 000 or imprisonment for 4 years.

- (3) In subsection (1)(a)—

*firearm* includes a device that would be a firearm within the meaning of this Act but for the fact that it has been rendered unusable in a manner stipulated in the regulations or by the Registrar.

### **27AAB—Seizure and forfeiture of equipment etc**

- (1) If a police officer suspects on reasonable grounds that an offence against section 27 or 27AA has been committed, is being committed or will be committed, the officer may 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.
- (2) If equipment, a device, an object or a document is seized under subsection (1), the Registrar may institute proceedings for forfeiture of the equipment, device, object or document before a court of summary jurisdiction.
- (3) If, in proceedings under subsection (2), the court is satisfied that the equipment, device, object or document was 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 equipment, device, object or document be forfeited to the Crown, or make such other order for the disposal of the equipment, device, object or document as it thinks appropriate.
- (4) If a court finds a person guilty of an offence against section 27 or 27AA and the court finds that any equipment, device, object or document was involved in the commission of the offence, the court may order that the equipment, device, object or document be forfeited to the Crown or be disposed of in such manner as the court directs.
- (5) If a police officer suspects on reasonable grounds that equipment, a device, an object or a document has been forfeited to the Crown by order of a court, the police officer may seize that equipment, device, object or document.
- (6) Equipment, a device, an object or a document seized under this section may be held—
  - (a) until—
    - (i) proceedings are instituted for—
      - (A) an order under this section; or

- (B) an offence against section 27 or 27AA for which, or in connection with which, the equipment, device, object or document is alleged to have been used,
    - or a decision is made not to institute such proceedings; or
    - (ii) the expiration of 12 months after the equipment, device, object or document was seized,whichever first occurs;
  - (b) if proceedings of either kind referred to in paragraph (a)(i) are instituted within 12 months after the equipment, device, object or document was seized—until those proceedings are finally determined.
- (7) The Registrar may sell or otherwise dispose of equipment, a device, an object or a document forfeited to the Crown under this section.
- (8) Subject to this Act and the regulations, the proceeds of the sale or disposal of equipment, a device, an object or a document under this section must be paid into the Consolidated Account.

### **13—Amendment of section 29A—Possession etc of silencer and certain parts of firearms**

Section 29A(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) A person who acquires, owns or has possession of a silencer is guilty of an offence.
- (2) A person who has possession of—
  - (a) a mechanism or other fitting that can be fitted to a firearm to convert it to an automatic firearm; or
  - (b) a mechanism or other fitting that, when fitted to a suitable firearm, will enable the firearm to fire grenades or other explosive projectiles,is guilty of an offence unless the person is authorised to have possession of the mechanism or other fitting by a firearms licence.
- (2a) Subject to this section, the maximum penalty for an offence against subsection (1) or (2) is \$10 000 or imprisonment for 2 years.
- (2b) The maximum penalty for an aggravated offence against subsection (1) or (2) is \$75 000 or imprisonment for 15 years.
- (2c) An offence against subsection (1) consisting of possession of a silencer is an aggravated offence if it has been proved that—
  - (a) the silencer to which the offence relates was fitted to a firearm; or
  - (b) the offender had physical possession or control of the silencer together with a firearm to which the silencer could be fitted.

- (2d) An offence against subsection (2) is an aggravated offence if it has been proved that—
- (a) the mechanism or other fitting to which the offence relates was fitted to a firearm; or
  - (b) the offender had physical possession or control of the mechanism or other fitting together with a firearm to which the mechanism or other fitting could be fitted.

#### **14—Insertion of section 29B**

After section 29A insert:

##### **29B—Possession etc of prohibited firearm accessory**

- (1) A person who owns, acquires or has possession of a prohibited firearm accessory is guilty of an offence.
- (2) Subject to this section, the maximum penalty for an offence against this section is \$10 000 or imprisonment for 2 years.
- (3) The maximum penalty for an aggravated offence against this section is \$75 000 or imprisonment for 15 years.
- (4) An offence against this section consisting of possession of a prohibited firearm accessory is an aggravated offence if it has been proved that—
  - (a) the accessory to which the offence relates was fitted to a firearm; or
  - (b) the offender had physical possession or control of the accessory together with a firearm to which the accessory could be fitted or in conjunction with which the accessory could be used.

#### **15—Amendment of section 32—Power to inspect or seize firearms etc**

- (1) Section 32(1aa)—delete subsection (1aa) and substitute:
  - (1aa) If a police officer suspects on reasonable grounds that a person has possession of a firearm, firearm part, silencer, prohibited firearm accessory, mechanism or fitting in contravention of this Act, the police officer may seize the firearm, firearm part, silencer, prohibited firearm accessory, mechanism or fitting.
- (2) Section 32—after subsection (1ab) insert:
  - (1ac) If a police officer suspects on reasonable grounds that a person has possession of a firearm, firearm part or ammunition in contravention of—
    - (a) a condition of a bail agreement under the *Bail Act 1985*; or
    - (b) a condition of the person's release on parole under the *Correctional Services Act 1982*; or
    - (c) a condition of the person's release on licence under the *Criminal Law (Sentencing) Act 1988*; or

- (d) a condition of a bond under the *Criminal Law (Sentencing) Act 1988*; or
  - (e) a condition of the person's release on licence under the *Criminal Law Consolidation Act 1935*; or
  - (f) a condition of the person's release on licence under the *Young Offenders Act 1993*; or
  - (g) any other Act,
- the police officer may seize the firearm, firearm part or ammunition.
- (3) Section 32(2)(a) and (b)—delete paragraphs (a) and (b) and substitute:
    - (a) any vehicle, vessel or aircraft on which the police officer suspects on reasonable grounds that there is a firearm, firearm part, silencer, prohibited firearm accessory, mechanism, fitting, ammunition or licence liable to seizure under this section; or
    - (b) any person who the police officer suspects on reasonable grounds has possession of a firearm, firearm part, silencer, prohibited firearm accessory, mechanism, fitting, ammunition or licence liable to seizure under this section.
  - (4) Section 32(3)—delete "break into,"
  - (5) Section 32(3)(a)—delete paragraph (a) and substitute:
    - (a) there is a firearm, firearm part, silencer, prohibited firearm accessory, mechanism, fitting, ammunition or licence liable to seizure under this section; or
  - (6) Section 32(3a)—after "Registrar" insert:

or to which a person is subject by order of a court
  - (7) Section 32(3a)—delete "mechanism, fitting" wherever occurring and substitute in each case:

firearm part
  - (8) Section 32(3b)(a)—after "applies" insert:

or to which the person is subject by order of a court
  - (9) Section 32—after subsection (3b) insert:
    - (3c) A police officer may, with such assistance as he or she considers appropriate, use such reasonable force as is necessary to—
      - (a) break into any premises, vehicle, vessel or aircraft in order to gain entry or conduct a search under this section; and
      - (b) if reasonably necessary for the purposes of conducting a search, break into or open anything in or on the premises, vehicle, vessel or aircraft.
  - (10) Section 32(4)—after "firearm," insert:

firearm part, silencer, prohibited firearm accessory,

**16—Amendment of section 34—Forfeiture of firearms etc**

- (1) Section 34(1)—after "firearm," wherever occurring insert:  
firearm part,
- (2) Section 34(2)—after "firearm," wherever occurring insert:  
firearm part,
- (3) Section 34(2)—after paragraph (a) insert:
  - (ab) the owner of the firearm, firearm part, mechanism, fitting or ammunition is prohibited from possessing the firearm, firearm part, mechanism, fitting or ammunition under another Act; or
- (4) Section 34(2)(b) and (c)—delete "that" wherever occurring
- (5) Section 34(3)—after "firearm," wherever occurring insert:  
firearm part,

**17—Amendment of section 34A—Powers of court on finding person guilty of firearms offence**

- (1) Section 34A(1)—after "firearm," wherever occurring insert:  
firearm part,
- (2) Section 34A(2)—after "firearm," wherever occurring insert:  
firearm part,
- (3) Section 34A(3)—delete subsection (3) and substitute:
  - (3) If a court makes an order that a person is subject to a firearms prohibition order—
    - (a) the order operates as a firearms prohibition order in force against the person under Part 2A; and
    - (b) the court may exercise the powers of the Registrar under section 10C(15) to grant an exemption from specified provisions of that section.

**18—Amendment of section 35—Disposal of forfeited or surrendered firearms etc**

- Section 35(1)—after "firearm," insert:  
firearm part,