

Legislative Council—No 158

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South Australia

Firearms (Miscellaneous) Amendment Bill 2021

A BILL FOR

An Act to amend the *Firearms Act 2015*.

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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 2021*.

5 2—Commencement

This Act comes 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.

10 Part 2—Amendment of *Firearms Act 2015*

4—Amendment of section 5—Categories and types of firearms

- (1) Section 5(1)(a)(iv)—delete "or pump action" and substitute:

, pump action or lever action

- (2) Section 5(1)(b)—after subparagraph (v) insert:

15 (va) lever action shotguns having a magazine capacity of 5 rounds or less;

- (3) Section 5(1)(b)(vi)—delete "or pump action shotguns" and substitute:

, pump action shotguns or lever action shotguns having a magazine capacity of more than 5 rounds

- (4) Section 5(1)(d)—after subparagraph (iv) insert:

20 (v) lever action shotguns having a magazine capacity of more than 5 rounds;

5—Amendment of section 22—Trafficking in firearms

(1) Section 22(10)—delete subsection (10) and substitute:

(10) Subject to this section, the maximum penalty for a first offence against subsection (1), (2) or (9) that involves only 1 firearm is as follows:

(a) in the case of an aggravated offence—

(i) if the firearm is a prescribed firearm, or a category C, D, or H firearm—\$100 000 or imprisonment for 20 years;

(ii) if the firearm is a category A or B firearm—\$50 000 or imprisonment for 10 years;

(b) in any other case—

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

(ii) if the firearm is a category C, D, or H firearm—\$50 000 or imprisonment for 10 years;

(iii) if the firearm is any other category of firearm—\$35 000 or imprisonment for 7 years.

(2) Section 22—after subsection (13) insert:

(14) An offence against subsection (2)(a) or (9) is an aggravated offence if it has been proved that the person to whom the firearm was supplied by the defendant was under the age of 18 years.

6—Insertion of section 66A

After section 66 insert:

66A—Cumulative sentences of imprisonment for certain offences

(1) If a person is convicted by a court of an offence against section 9 and an offence against section 31(1), the court must make any sentences of imprisonment imposed for the 2 offences cumulative unless the court is satisfied that special reasons exist for not doing so.

(2) If a person is convicted by a court of an offence against section 22(2)(a) and an offence against section 31(4), the court must make any sentences of imprisonment imposed for the 2 offences cumulative unless the court is satisfied that special reasons exist for not doing so.

Schedule 1—Transitional provisions

1—Transitional provisions—lever action shotguns

(1) The following provisions apply to and in respect of a person in whose name a category B lever action shotgun was registered immediately before the relevant day and who was authorised to possess the shotgun under a firearms licence held by the person immediately before the relevant day:

(a) registration of the shotgun in the person's name will, subject to the Act, on and from the relevant day, be taken to be registration as a category B firearm;

(b) if the firearms licence held by the person immediately before the relevant day does not authorise the person to possess a category B firearm, then the licence will, subject to the Act and any conditions of the licence, be taken to authorise possession of the category B lever action shotgun for the purpose for which it was authorised under the person's licence immediately before the relevant day but only for such time as the licence (or any renewal of the licence) is in force under the Act.

(2) The following provisions apply to and in respect of a person in whose name a category D lever action shotgun was registered immediately before the relevant day and who was authorised to possess the shotgun under a firearms licence held by the person immediately before the relevant day:

(a) the registration of the shotgun in the person's name will, subject to the Act, on and from the relevant day, be taken to be registration as a category D firearm;

(b) if the firearms licence held by the person authorises the person to possess a category D firearm for the purpose for which the category D lever action shotgun was authorised immediately before the relevant day, the licence will, subject to the Act and any conditions of the licence, be taken to authorise possession of the category D lever action shotgun for that purpose but only for such time as the licence (or any renewal of the licence) is in force under the Act;

(c) for the purposes of paragraph (b)—

(i) in the case of a person who holds a category 7 (contract shooter) licence immediately before the relevant day that authorises the person to possess a category D firearm, regulation 20(3) of the Regulations does not apply in respect of the category D lever action shotgun; and

(ii) in the case of a person who holds a category 10 (collector) licence immediately before the relevant day that authorises the person to possess a category D firearm, regulation 23(3) of the Regulations applies in respect of the category D lever action shotgun;

- 5 (d) if the firearms licence held by the person does not authorise the possession of a category D firearm, or the possession of a category D firearm for the purpose for which the lever action shotgun was authorised immediately before the relevant day, then the person will, subject to the Act and any conditions of the licence, be taken to be the holder of a category 12 (miscellaneous) licence that authorises possession of the specified category D lever action shotgun for the purpose for which it was authorised under the person's licence immediately before the relevant day;
- 10 (e) regulation 25(11) of the Regulations does not apply in respect of a category 12 (miscellaneous) licence held by a person by virtue of the operation of paragraph (d).

(3) To avoid doubt—

- 15 (a) a person only has the benefit of the transitional arrangements under this clause in respect of a particular lever action shotgun registered in the name of the person immediately before the commencement of this clause and only while the lever action shotgun remains registered in the name of the person; and
- 20 (b) a person loses the benefit of the transitional arrangements under this clause in respect of that lever action shotgun if its ownership is transferred to another person or it is lost, stolen or destroyed.

(4) A permit to acquire a firearm in force before the relevant day that authorises a person to acquire a lever action shotgun does not authorise the person to acquire a lever action shotgun on or after the relevant day (and may be cancelled by the Registrar under section 24 of the Act) unless the person is the holder of—

- 25 (a) in the case of the acquisition of a category B lever action shotgun—a licence that authorises the person (subject to the Act and conditions of the licence) to possess a category B firearm for the purpose for which the shotgun is being acquired; or
- 30 (b) in the case of the acquisition of a category D lever action shotgun—a licence that authorises the person (subject to the Act and conditions of the licence) to possess a category D firearm for the purpose for which the shotgun is being acquired.

Note—

35 It is a condition of a category 7 (contract shooter) licence under regulation 20(3) and a category 12 (miscellaneous) licence under regulation 25(11) of the Regulations that authorise possession of a category D firearm that the licensee must have a special need for the firearm that cannot be met by a firearm of any other category and so may not authorise the possession of the category D lever action shotgun (and thus its acquisition under the permit).

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(5) The Registrar may, at the discretion of the Registrar—

- (a) require a person to provide to the Registrar a specified certificate of registration or firearms licence in order for the certificate or licence to be updated in accordance with the operation of this clause; and

(b) issue (or re-issue) a certificate of registration to a person in whose name a lever action shotgun is registered to reflect the change in category of firearm effected by the amendments to the Act by this Act; and

5 (c) issue (or re-issue) a firearms licence held by the person so that the endorsement on the licence reflects the fact that a person is taken to be authorised to possess a specified lever action shotgun, or possess the lever action shotgun for a specified purpose, in accordance with the provisions of this clause; and

10 (d) issue a category 12 (miscellaneous) licence to a person who is taken to hold the licence under this clause that specifies the category D lever action shotgun in respect of which it is issued.

(6) Fees that would otherwise be payable in respect of the registration or variation of registration of a firearm, or the granting or variation of a firearms licence, for the purposes of this clause are not payable by a person who has the benefit of any transitional arrangements under this clause.

(7) In this clause, unless the contrary intention appears—

Act means the *Firearms Act 2015*;

category B lever action shotgun means a lever action shotgun with a magazine capacity of 5 rounds or less;

20 *category D lever action shotgun* means a lever action shotgun with a magazine capacity of more than 5 rounds;

Registrar means the Registrar of Firearms under the Act;

Regulations means the *Firearms Regulations 2017*;

relevant day means the day on which this clause comes into operation.