

IMITATION FIREARMS – A QUICK GUIDE

REGULATED IMITATION FIREARMS

Distinguishing regulated imitation firearms from toys and other firearm novelty items.

WHY IS IT IMPORTANT TO KNOW ABOUT IMITATION FIREARMS?

This guide will assist you to distinguish whether a particular item is classified as a *regulated imitation firearm*, a toy firearm or other novelty item resembling a firearm. The distinction is important because the unlawful manufacture, importation, purchase, ownership, carriage or use of a regulated imitation firearm in South Australia can lead to penalties under the *Firearms Act 1977*.

There is a clear distinction between imitation firearms and regulated imitation firearms - imitation firearms are not captured by, or subject to, provisions of the Firearms Act and Firearms Regulations. In contrast, regulated imitation firearms are treated by the Firearms Regulations as firearms, subject to regulatory requirements including purpose of use licensing, registration and stringent security measures.

The information contained in this guide is provided by South Australia Police in good faith and should be treated as a guide only. The responsibility for determining the status of these objects rests initially with the individual and ultimately the Courts. It is recommended independent legal advice is sought regarding personal possession or commercially dealing in regulated imitation firearms.

Some of the items described in this guide may not be classified as regulated imitation firearms, however, their possession and use may still constitute an offence under certain circumstances: prosecution may be launched for offences such as carrying an offensive weapon, and robbery offences where an imitation firearm, as opposed to a regulated imitation firearm, may have been used.

REGULATED IMITATION FIREARMS

An underlying premise of the *Firearms Act 1977* and *Firearms Regulations 2008* is to ensure the community is protected from unsafe or criminal use of firearms. The need to regulate the possession and use of regulated imitation firearms is the foundation of regulation 5 of the Regulations.

Regulation 5(2)(a) of the Regulations states a regulated imitation firearm is:

(a) an item that contains a mechanism that imitates the loading mechanism or firing mechanism of a firearm;

To fall within regulation 5(2)(a) an item must contain a mechanism, or mechanical parts, which **imitate the loading or firing mechanism of a firearm**.



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The '**loading mechanism**' of a firearm means all the parts of the firearm (except the barrel) that are designed to place or hold or place and hold a round in position for firing and includes the magazine of the firearm.

The '**firing mechanism**' of a firearm means the mechanism of the firearm that is designed for the purpose of firing the firearm.

Under regulation 5(2)(a), an item will be classified as a **regulated imitation firearm** when the item:

- has a significant mechanical element to it that replicates the loading or firing mechanism of a firearm; and
- can readily be adapted to function as a firearm.

An item will be considered 'readily adaptable' to function as a firearm if a person familiar with firearms could render the item operable with a moderate exercise of effort and skill.

An item does not need to include the complete loading mechanism or firing mechanism of a firearm, but it must have a significant mechanical element to it that replicates the loading or firing mechanism of a firearm. An imitation firearm which has a moving trigger, hammer, cycling slide or revolving cylinder (in the case of a revolver) would have a sufficient firing mechanism even though it may not have a firing pin.

An item does not have to function: rather it must have the **appearance of a degree of mechanical functionality**. That is, the item must operate or must have the mechanical appearance of operating like a firearm.

Regulation 5(2)(b) of the Regulations states a regulated imitation firearm is:

(b) an item that is an imitation of the receiver of a firearm,

A '**receiver**' of a firearm means the body or frame of the firearm that is designed to hold the firing mechanism or the loading mechanism or both in place but does not include the stock or barrel of the firearm.

To fall within regulation 5(2)(b) an item must imitate the receiver (body or frame) of a firearm. Unlike regulation 5(2)(a) which regulates items presenting as a complete imitation firearm (e.g. incorporating parts such as a barrel or stock, etc.), it is only an item imitating a firearm part known as a receiver that is captured by regulation 5(2)(b). That is, the item must be a stand-alone imitation receiver, not fitted or joined to any other major firearm parts.

It is not necessary for an item to contain mechanical parts to be a regulated imitation firearm under regulation 5(2)(b), however the item must have the capacity to hold a firing mechanism or loading mechanism or both in place.

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The following are likely to be considered regulated imitation firearms.



ITEMS EXCLUDED FROM BEING REGULATED IMITATION FIREARMS

The Act and Regulations expressly exclude a number of items from being regulated imitation firearms. A number of further items should not be considered regulated imitation firearms. These items include:

- children's toys
- novelty items
- items determined by the Registrar of Firearms not to be regulated imitation firearms
- antique firearms
- devices exempted by regulation 6 of the Regulations
- de-activated firearms
- moulded imitation firearms
- items resembling a firearm which do not contain a receiver or a mechanism which imitates the loading mechanism or firing mechanism of a firearm
- imitation firearms carved from timber.

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CHILDREN'S TOYS

Regulation 5(2)(c) expressly excludes children's toys, so irrespective of their appearance or presence of a loading mechanism or firing mechanism, they are not regulated imitation firearms.

An item originally created, manufactured, sold or distributed as a children's toy, irrespective of whether it can be adapted or altered to function as a firearm, is to be regarded as a children's toy and NOT a regulated imitation firearm.¹

A children's toy includes a cap gun, water pistol, 'super soaker' or rubber band gun.

It is not always easy to identify a toy firearm, and therefore when considering whether an object is a children's toy, the following should be taken into account:

- Whether the item is solely manufactured and used for the purpose of a plaything for children.
- Whether the item is marketed and/or sold as a children's toy.
- The item's availability in recognised Australian toy stores, supermarkets and similar stores.
- Whether a reasonable prudent person would consider the item a children's toy.
- Whether the materials used in the manufacture of the item create the immediate impression the item cannot be a functional firearm.
- Whether the item could not be readily converted to be an actual firearm capable of firing a projectile.

The following are children's toys.



¹ R v Grosser [2015] SADC 122 at [5] – [8]

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NOVELTY ITEMS

Like children's toys, regulation 5(2)(c) expressly excludes novelty items from being regulated imitation firearms.

Novelty items include firearm themed paraphernalia such as gun shaped cigar/cigarette lighters, vases and coffee mugs in the shape of a firearm, corkscrews and key rings with a small firearm shaped attachment.

Starting pistols using hammers and caps and electronic starting pistols are not considered to be regulated imitation firearms.

The following are novelty items or items not considered regulated imitation firearms.



Double copper hammer cap gun



E-gun starting pistol



Electronic starter pistol designed to work with a 30 watt amp



Gun shaped vase



Gun shaped coffee mug

Pistol has three sounds: a gun noise, whistle and swim beep



Door furniture



Gun shaped corkscrew



Letter box

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ANTIQUE FIREARMS

The definition of ‘**firearm**’ in section 5 of the Act expressly excludes an antique firearm. Consequently, an antique firearm is excluded from being a regulated imitation firearm. An antique firearm is a firearm that:

- (a) was manufactured before 1900; and
- (b) is kept solely for curiosity, display or ornamental purposes; and
- (c) is not used to fire projectiles; and
- (d) —
 - (i) in the case of a firearm other than a class H firearm—
 - (A) is designed to fire breech loading cartridges and is not a firearm for which live rounds of ammunition are commercially manufactured factory loaded; or
 - (B) is not designed to fire breech loading cartridges; or
 - (ii) in the case of a class H firearm—is a handgun designed or altered to fire by means of a flintlock, matchlock, wheel-lock or other system used prior to the use of percussion caps as a means of ignition, and includes a receiver of such a firearm.

DEVICES EXEMPTED BY REGULATION 6

Regulation 6 expressly excludes a number of items from the provisions of the Act and Regulations, and therefore they cannot be regulated imitation firearms. These items include:

- (a) captive bolt guns
- (b) tools or instruments powered by burning propellant or by compressed air or other compressed gas
- (c) rocket line launchers
- (d) devices designed to throw a net to catch animals
- (e) devices designed to throw an object for shotgun target practice
- (f) dog retrievers
- (g) Very pistols (e.g. flare guns) used only for signalling distress or rescuing persons in distress;
- (h) a firearm that—
 - (i) has been fitted with a transmitter of infrared electromagnetic waves or a receiver of such waves or both; and
 - (ii) has been modified so as to be incapable of firing a projectile; and
 - (iii) cannot easily be modified to fire projectiles
- (i) an underwater firearm (excluding power heads which are defined as firearms under the Act)
- (j) receivers of firearms referred to in a preceding paragraph.

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DE-ACTIVATED FIREARMS

The definition of ‘**firearm**’ in section 5 of the Act expressly excludes a device that has been rendered unusable in a manner stipulated in the Regulations or by the Registrar of Firearms. Consequently, a de-activated firearm is excluded from being a regulated imitation firearm.

MOULDED IMITATION FIREARMS

These items include imitation firearms created by using plastic, resin, metal or other similar compounds with a mould. These items contain no mechanical parts or a receiver and cannot be regulated imitation firearms.

ITEMS RESEMBLING A FIREARM WHICH DO NOT CONTAIN A RECEIVER OR A MECHANISM WHICH IMITATE THE LOADING MECHANISM OR FIRING MECHANISM OF A FIREARM

In order to be classified as a regulated imitation firearm an item must contain mechanical parts or an item imitating the receiver of a firearm. In the absence of these features an item closely resembling a firearm cannot be classified as a regulated imitation firearm.

IMITATION FIREARMS CARVED FROM TIMBER, PLASTIC OR OTHER MATERIAL

Solid carved objects that imitate the appearance of a firearm but do not contain a receiver or any mechanical parts are not regulated imitation firearms.

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SUMMARY

An underlying premise of the *Firearms Act 1977* and *Firearms Regulations 2008* is to ensure the community is protected from unsafe or criminal use of firearms. The need to regulate the possession and use of regulated imitation firearms is the foundation of regulation 5 of the Regulations.

Regulated imitation firearms are treated by the Act as firearms, subject to regulatory requirements including purpose of use licensing, registration and stringent security measures. In doing this, the Act recognises that regulated imitation firearms have a closer relationship and nexus to functional firearms than imitation firearms which may have a stronger link to the physical resemblance, rather than the functionality, of a firearm.

FURTHER INFORMATION

For further information contact South Australia Police's Firearms Branch on (08) 732 23346 or via email at: SAPOL.FirearmsBranch@police.sa.gov.au