

Licensing & Regulation Division Quick Guide



Imitation Firearms: Distinguishing imitation firearms from toys and other firearm themed paraphernalia

WHY IS IT IMPORTANT TO DISTINGUISH?

This guide will assist you to distinguish whether an item is classified as an imitation firearm or a firearm toy or other firearm themed paraphernalia. The distinction is important as the unlawful manufacture, importation, purchase, ownership, carriage and/or use of imitation firearms can lead to penalties for non-compliance.

The information contained in this guide is provided by Victoria Police in good faith and should be treated as a guide only. The responsibility for determining the status of an object always rests with the individual in the first instance and ultimately the courts. Victoria Police strongly recommends that independent legal / expert advice specific to your circumstance be obtained in relation to decisions, whether of a commercial or personal nature.

CAN YOU TELL THE DIFFERENCE?

Five of the eight firearms illustrated below are imitation firearms, the other three are toys.

| | | |
|---|--|---|
| <p>A:</p>  | <p>B:</p>  | <p>C:</p>  |
| <p>D:</p>  | <p>E:</p>  | <p>F:</p>  |
| <p>G:</p>  | <p>H:</p>  | |
| <p>ANSWER: Imitation Firearms A, B, D, F & G – Toys C, E & H</p> | | |



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IMITATION FIREARMS

In the state of Victoria, devices that can reasonably be mistaken for working firearms based on their overall appearance (but do not have the functionality of a working firearm), are classified as imitation firearms.

A Chief Commissioner's Prohibited Weapons Approval or Governor in Council Exemption is required to possess, carry, use, offer for sale or import an imitation firearm.

Whilst these items cannot cause death or injury by shooting projectiles, they can nonetheless cause public alarm due to their similarity in appearance to working firearms. Even items that remotely resemble firearms could be easily mistaken as working firearms in certain circumstances depending on factors such as lighting conditions, distance from the object, the viewer's knowledge of firearms and/or circumstances in which they are carried.

The determination of whether a particular device has the reasonable appearance of a working firearm is open to interpretation and should be considered 'on balance'. It is for this reason that devices fitted with a coloured barrel plug or coloured grip is not sufficient, in and of itself for an item to not be considered an imitation firearm.

Imitation firearms are increasingly made to look like real firearms, and can be made of any substance (metal, plastic, rubber etc) to resemble either a longarm (rifle, shotgun, or machinegun) or handgun (revolver or pistol).

Examples of imitation firearms are provided on the following page.





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EXAMPLES OF IMITATION FIREARMS

Whilst these products may have been manufactured to be toys, each of these have the overall appearance of a firearm and could reasonably be mistaken for an operable firearm. This remains the case whether a coloured grip or barrel plug is present.



Note: Victoria Police do not endorse any of the products illustrated.



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TOY FIREARMS

As a rule, toy firearms are considered items that resemble firearms but cannot reasonably be mistaken as working firearms. As such, toy firearms can be lawfully possessed by anyone with the State of Victoria.

The defining characteristics of toy firearms are:

1. They are solely manufactured and used for the purpose of a plaything or for providing amusement; and
2. their method of operation (if applicable) falls outside the definition of a firearm in the *Firearms Act 1996*; and
3. they have a resemblance to a firearm; however, their appearance cannot reasonably be mistaken for a working firearm by a reasonable person. Some characteristics that influence this determination may include:
 - the **shape and size** are of a kind not associated with a working firearm; and
 - the overall **colouring** is not normally associated with a working firearm; and
 - the **materials** used in their manufacture create the immediate impression that the device cannot be functional.



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FIREARM-THEMED PARAPHERNALIA

There are many items manufactured for firearm enthusiasts. These firearm themed paraphernalia have parts that resemble a firearm (either in whole or in part), as a key feature of forming part of the item.

The defining characteristics which distinguish them from imitation firearms are as follows:

1. the manufacturer's intended purpose of the object is clearly obvious as an ornament, decoration, novelty item or piece of furniture.
2. The overall appearance of the object cannot be mistaken for a working firearm by a reasonable person; and
3. the firearm components have the following characteristics:
 - they do not have the appearance of a whole or complete firearm (for example, it may be split into parts on its vertical or horizontal axis), or
 - in the case where the firearm component does have the appearance of a whole or complete firearm, the component is permanently affixed to other non-firearm specific structures.



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These are some examples of firearm-themed paraphernalia that do not fall into the definition of an imitation firearm and therefore can be possessed without a permit or an approval in Victoria:



Objects that contain a complete imitation firearm attached to a mounting board with no other modifications will be deemed to be an imitation firearm unless there is a presence of other non-firearm modifications. This means that they will require a Chief Commissioner's Prohibited Weapons Approval or Governor in Council Exemption to be manufactured, possessed, carried, used, sold, or imported in the State of Victoria.

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FREQUENTLY ASKED QUESTIONS

Are imitation firearms and replica firearms the same thing?

No. The term 'replica firearm' is often incorrectly used to describe imitation firearms. A replica firearm is a copy of a working firearm and has the same functionality. This means that not only does a replica look identical to the working firearm it is copying but it also functions in the same way by firing bullets, shots, or other similar projectiles.

Owners of replica firearms must possess a firearm licence, and the replica must be registered under the *Firearms Act 1996*. For this reason, it is important that the terms 'replica firearm' and 'imitation firearm' are not confused.

Do I require a licence to own an imitation firearm?

Imitation firearms are classified as 'prohibited weapons'. Owners of prohibited weapons do not require a firearms licence, but do not require a Chief Commissioner's Prohibited Weapons Approval unless they are subject to a Governor in Council Exemption.

Do I require a Chief Commissioner's Prohibited Weapons Approval if I already have a firearm licence for my imitation handguns?

Current Victorian firearm licence holders with imitation firearms attached (issued under Part 2 of the *Firearm Act 1996* prior to 1 July 2011) can continue to hold onto – but not obtain further imitation firearms, until such time as the licence expires – at which time a Chief Commissioner's Prohibited Weapons Approval or Governor in Council Exemption will be required.

Can I make a toy look more realistic?

Yes, however if the modifications make the toy resemble a working firearm, it could be considered an imitation firearm. In this case you will need either a Chief Commissioner's Prohibited Weapons Approval or a Governor in Council Exemption.



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What does a Chief Commissioner's Weapons Approval or a Governor in Council Exemption allow me to do?

One of these authorities will allow you to manufacture, possess, carry, use, sell or import an imitation firearm in the State of Victoria (depending on your genuine reason for obtaining the authority).

How do I apply for a Chief Commissioner's Prohibited Weapons Approval?

To apply for a Chief Commissioner's Prohibited Weapons Approval, you must complete and apply form available on the Victoria Police, Licensing & Regulation Division website located at www.police.vic.gov.au/weapons and then select 'Chief Commissioner's Approval' from the left hand navigation bar.

How do I apply for a Governor in Council Exemption?

Exemptions are managed by the Department of Justice and Community Safety and published in the Government Gazette. Governor in Council Exemptions are issued for groups (eg. collectors clubs and historical/performing arts re-enactment groups), but not to individuals. To apply for a Governor in Council Exemption, email jpenquiries@justice.vic.gov.au or for further information, visit the Department of Justice and Community Safety website at www.justice.vic.gov.au/home

How can I dispose of my imitation firearms?

An imitation firearm can be disposed in one of two ways:

1. to a Police Station for destruction, or
2. you may transfer ownership to a Licensed Firearm Dealer, or any person provided they are the holder of a Chief Commission's Prohibited Weapons Approval or a Governor in Council Exemption authorising the possession/sale of imitation firearms (as the case may be).

Do I need to register my imitation firearm?

No. There are no registration requirements for prohibited weapons, including imitation firearms.



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Is there a limit to how many imitation firearms I can possess under a Chief Commissioner's Weapons Approval or a Governor in Council Exemption?

No. There is no requirement to register imitation firearms. There is no limit as to the amount that can be possessed once a Chief Commissioner's Prohibited Weapons Approval or Governor in Council Exemption is obtained, unless otherwise specified by condition.

How must I store my imitation firearms?

Imitation handguns and longarms must be stored safely and securely in a manner to ensure that:

- the imitation firearms are not readily accessible to others.
- The imitation firearms are not available for possession, carriage or use by others unless they are holders of a Chief Commissioner of Police Approval (Prohibited Weapons) issued for the same reason or are otherwise exempt (if applicable); and
- when being transported between the usual place of storage and places at which the imitation firearms are legitimately used (reason of which is stated in this authority), they are stored in a manner that is not readily accessible to others and concealed from plain sight.

Is a device an imitation firearm if it can be converted into an operable firearm?

No. If the imitation firearm is capable of being modified into an operable firearm, it falls under the definition of a firearm under section 3 of the *Firearms Act 1996* and would require a firearm licence to lawfully possess it.

Further Information:

- go to www.police.vic.gov.au for further information and examples of imitation firearms, toy and other paraphernalia and a list of more common articles declared to be toys; or
- contact your Divisional Firearms Officer; or
- contact Licensing & Regulation Division on 1300 651 645, Monday, Wednesday, and Friday between the hours of 10:00am and 2:00pm; or
- email photos to Licensing & Regulation Division at: lrd@police.vic.gov.au