

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 93067/19

In the matter between:

NATIONAL HUNTING AND SHOOTING
ASSOCIATION ("NHSA")

Applicant

and

MINISTER OF POLICE

First Respondent

THE NATIONAL COMMISSIONER OF

THE SOUTH AFRICAN POLICE SERVICE

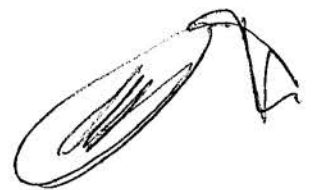
Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

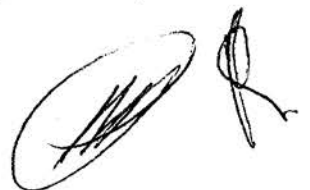
HERMAN ELS

state under oath as follows:



THE PARTIES:

1. The Applicant is the NATIONAL HUNTING AND SHOOTING ASSOCIATION (NPC) (Registration Number: 2015/278984/08) a non-profit company, with limited liability, which was registered in terms of the laws of South Africa and having its principal place of business at 59 Mac Kenzie Street, Brooklyn, Pretoria.
2. I am a director of the Applicant and I have been authorised by a directors' resolution to depose to this affidavit for and on behalf of the Applicant and its members, in support of this application.
Annexure "HE1" hereto is a copy of the resolution.
3. The contents hereof fall within my personal knowledge and belief and are both true and correct, unless it appears otherwise from the context thereof.
4. The First Respondent is the MINISTER OF POLICE, cited herein in his official capacity as the national executive head of the Department of Police, having overall executive authority over the South African Police Service ("the SAPS") and he is "*the Minister*" as referred to in the Firearms Control Act, 60 of 2000 ("the Act")

Handwritten signature and initials in the bottom right corner of the page.

having his head office c/o the National Commissioner of Police, at Wagthuis, 231 Pretorius street, Pretoria. For purposes of accepting service of legal process and documents the First Respondent has the address of the State Attorney, Pretoria, SALU Building 316 Thabo Sehume Street, corner Thabo Sehume & Francis Baard Street, Pretoria.

5. The Second Respondent is the NATIONAL COMMISSIONER OF POLICE, cited herein in his official capacity as administrative head of the SAPS and as "*the Registrar*" as referred to in the Act, having his head office at Wagthuis, 231 Pretorius street, Pretoria. For purposes of accepting service of legal process and documents the First Respondent has the address of the State Attorney, Pretoria, SALU Building 316 Thabo Sehume Street, corner Thabo Sehume & Francis Baard Street, Pretoria.

JURISDICTION:

6. The above Court has jurisdiction to entertain this matter by virtue thereof that both the Respondents have their offices within the Court's jurisdiction, and conduct their business here.

Handwritten signature and initials in black ink, located at the bottom right of the page.

LOCUS STANDI:

7. This application concerns an amnesty which had been announced by the First Respondent in the Government Gazette of 27 November 2019, purporting to have been made in terms of the provisions of Sections 138 and 139 of the Act ("the amnesty"). **Annexure "HE2"** hereto is a copy of the amnesty notice which was published. The amnesty is dealt with in more detail herein below. For present purposes it suffices to state that the amnesty would affect the rights and interests of thousands of firearm owners whose firearm licences had expired as a result of various reasons.
8. The Applicant is a firearm owners association, which is also accredited in terms of the Act as a Hunting Association (with FAR number 1300050) and Sports Shooting Association (with FAR number 1300088).
9. According to the statements which were recently made in Parliament, advocating the case of the SAPS for the announcement of the amnesty, the amnesty would affect approximately 450 000 firearm owners who have failed to renew their firearm licences as provided for in terms of section 24 and 28 of the Act. It is pointed

A handwritten signature in black ink, consisting of a large, stylized 'A' or 'H' shape followed by a smaller, more complex flourish.

out that section 13 of the Act provides that a person can only possess one firearm for self defence. Such licences are only valid for five years and the bulk of expired licences most probably fall into this group. The figure of 450 000 therefore relates to both persons as well as firearms.

10. On 30 November 2019 the Applicant had 35 642 members, who are all firearm owners, of whom hundreds are affected by the amnesty. The Applicant is entitled to represent the collective interests of its members in this application.
11. When a person becomes a member of the Applicant such person must subscribe and abide by the constitution of the Applicant and the Directors' as well as the Executive Council of the Association's decisions which are from time to time taken in the administration of the affairs of the Applicant. The decision by the directors of the Applicant to commence this court application is implicitly approved by its members through their indicated adherence to the conditions of their enrolment.
12. The subject matter of this application is also of public interest as it concerns an important issue concerning responsible firearms

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a smaller, less distinct mark.

- 6 -

control. The issue of public interest is threaded throughout the entire debate about how unlicensed firearms should be treated. As an association which represents a significant number of firearm owners, who will probably be affected by the amnesty, the Applicant has the required standing to lodge this application.

NATURE OF APPLICATION:

13. The Applicant challenges the legality of the amnesty and seeks the ancillary relief which is aimed at protecting the rights of firearm owners in the event that a **substitute** amnesty is contemplated by the First Respondent if this application were to succeed, as it should.

14. The relief the Applicant seeks includes prayers for the following:

14.1. The review and setting aside of the amnesty notice on the basis of illegality;

14.2. Alternatively, that Notice no 42858 be declared invalid, and/or *ultra vires* the provisions of Section 139(2) of the Act;



14.3. That the First Respondent be prohibited from declaring an amnesty as contemplated in Section 139(1) of the Act until such time as reasonable notice, as well as a reasonable opportunity has been afforded all or any person/s, association/s and/or entity/ies, (including the Applicant), who may have an interest in an intended amnesty, to make representations to the First Respondent, and/or the Parliamentary standing committee for Police, concerning the conditions such amnesty, and the First Respondent is directed to consider such representations before submitting to Parliament for its approval, any notice of a proposed amnesty as required by Section 139(2) of the Firearms Control Act;

14.4. In the event of the First Respondent next time around applying to Parliament for the approval of an amnesty notice, as is required by Section 139(1) and (2) of the Act, and which was not done, then and in such event, the First Respondent shall include in such notice, conditions which provide for owners of firearms, licenced in terms of the Act (New Order firearm licences), whose licences had lapsed to apply for the renewal of such licences, in terms of Section

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a smaller, less distinct mark.

- 8 -

139(4)(a) of the Act, and in the event that it be required that such renewal applications were only to be accepted from holders of valid competency certificates, then and in such event, any application for the renewal of firearms licences in terms of Section 139(4)(a) of the Act shall be accepted, but not finalised until such time as, the particular applicant/s have had a reasonable opportunity to also apply for the required competency certificate/s, and the final outcome of their respective applications;

- 14.5. That pending the submission of a substitute amnesty notice to Parliament for the approval thereof, as required by Sections 139(1) and (2) of the Act, the First and Second Respondents are prohibited from confiscating and destroying any firearms, and/or to arrest and prosecute owners of firearms and ammunition for the illegal possession thereof, on account of firearms and ammunition, the New Order licences to hold in respect of which had lapsed for want of renewal.

A handwritten signature and initials, possibly 'JH', are located in the bottom right corner of the page.

- 9 -

ROLE PLAYERS IN AMNESTY:

15. In terms of section 139 (1) of the Act, the First Respondent is entitled to declare an amnesty.
16. In terms of Section 123 of the Act, the Second Respondent as the Registrar of Firearms, is responsible to oversee the administration of the amnesty process.
17. In terms of Section 11(1) of the South African Police Service Act, 68 of 1995, the Second Respondent is responsible to exercise control over and manage the SAPS in accordance with Section 207(1) of the Constitution of South Africa, 1996.

INTRODUCTORY STATEMENTS:

18. There is no doubt an unacceptable high prevalence of serious violent crime in South Africa by criminals with illegal firearms.
19. There is therefore a need for an amnesty:
 - 19.1. intended to reduce the proliferation of illegal firearms in the



- 10 -

hands of criminals; and

19.2. which is in the public interest.

20. The conditions which are contained in the published amnesty notice do however, not make provision for a fair and just process for re-licensing of firearms of which the licences had expired.
21. The impugned amnesty will not attain the purpose, but will instead unfairly, and illegally disarm firearm owners whose licences have lapsed, which is at odds with the First Respondent's publicly expressed intentions.
22. The Respondents intentionally misinterpreted the order of this court concerning the possession of firearms under the 1969 Act (the previous Act), issued by Prinsloo J on 26 June 2009 under case number 33656/2009, a copy of which is attached and marked, **Annexure "HE3"** ("the Previous Act"). The Respondents take the position that once a firearm owner has taken part in the re-licencing in terms of the 2004 Act, and his/her New Order licence has expired, then he/she should be regarded to be in unlawful possession of an illegal firearm, and therefore obliged to participate



- 11 -

in the amnesty in order to escape the consequences of illegal possession.

23. There has been no, or completely inadequate public participation before the amnesty was declared.
24. The prescribed process to declare an amnesty, as set out in section 139 (2) of the Act, was not followed, which resulted in the amnesty being invalid, and subject to a legality challenge.
25. The amnesty was illegally declared, and is not in the public interest as required in terms of section 139 (1) (b) of the Act.
26. Moreover, the publication of the amnesty notice (Annexure "HE2" hereto) constituted an *ultra vires*, legally flawed, and unlawful administrative action by the First Respondent, in that the First Respondent did not acquire parliamentary approval of the published notice itself, as is explicitly required by Section 139(2)(a) of the Act. This failure demands the urgent review and setting aside of the First Respondent's unlawful administrative action.

A handwritten signature in black ink, consisting of a large, stylized 'A' or 'H' shape with a vertical line extending downwards from the right side.

RELEVANT SECTIONS IN THE ACT:

27. The following sections of the Act will be primarily relied upon:

27.1. Section 138;

27.2. Section 139 which deals with the requirements for a declaration and the conditions.

A copy of an extract from the Act, containing the said sections is attached for the court's convenience, and marked **Annexure "HE4"**.

UNLICENSED FIREARMS AND AMNESTY:

28. On a proper consideration of the enabling sections of the Act, section 139, an amnesty may be declared only if:

28.1. it may result in the reduction of the number of "*illegally possessed firearms*"; and

A handwritten signature, possibly 'MD', is enclosed in a large oval. To the right of the oval are the initials 'JA'.

28.2. it would be in the public interest.

29. In contra distinction to the above targeted illegal firearms, the Minister at the launch of the impugned amnesty on 28 November 2019, made the following statements:

*"The declaration of the amnesty period is in the interest of the public. It is also government's endeavour to deal decisively with **excess firearms** and **unwanted firearms** that end up in the hands of criminals, therefore increasing the proliferation of firearms."* (my emphasis)

30. The above quoted statement of the First Respondent demonstrate the incorrect, and/or unwarranted considerations considered by the Minister when embarking upon the exercise of his impugned discretion.
31. Section 139(4) provides for an opportunity to a participant in an amnesty to apply for a licence once he/she surrendered the firearm in question.



32. There are potentially three categories of persons who could conceivably avail themselves of an amnesty such as the one under consideration:

32.1. persons who possess firearms in terms of licences issued under the 1969 Act (Old Order licences). This category of possessors' possession is by all accounts pretty uncertain as to the lawfulness or otherwise thereof by virtue of the Order of Prinsloo J;

32.2. persons who obtained licenses under the 2000 Act (New Order licenses), which had lapsed, and who were lulled into a false sense of security by the order issued by Tolmay J on

32.3. persons in possession of firearms which they never obtained a new order license for, this group again falls out in two groups; firstly, the outright criminals, and secondly, those who "inherited" firearms, but have not ever applied for a license to possess same (estate firearms).

33. It is a well-known, and well documented fact that the impugned amnesty is the third one under the New (2000) Act.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a final vertical stroke.

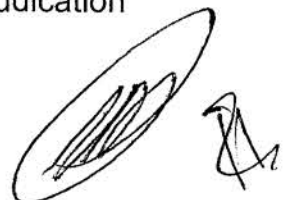
34. It is likewise well documented that during the previous two amnesties, where a total of 122 783 firearms were surrendered, (2005 - 80 454 and 2010- 42 329) not a single firearm was found to have been used in the commission of a crime. Criminals do not surrender their firearms, simply because amnesty only goes to the unlawful possession of firearms and ammunition, and does not in terms of section 138 of the Act extend to crimes committed with such weapons.

35. I need to dispel the first blush impression the court may have that the 450 000 persons that make up the number of those who fall into categories sub 1 and sub 2 above, have only themselves to blame.

36. The above impression is for the following reasons not the case:

36.1. The transitional provisions of the New Act provided that all Old Order licences would expire on 30 June 2009 if not renewed.

36.2. On 26 June 2009 Prinsloo J, in this court, issued the order, Annexure "HE3", stating *inter alia* that all Old Order licenses shall be deemed valid and lawful pending final adjudication

A handwritten signature, possibly 'Prinsloo', is enclosed in a large, loopy oval. To the right of this oval are the initials 'A1'.

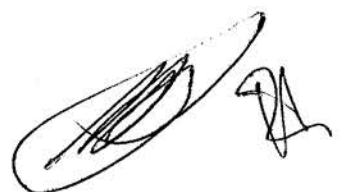
- 16 -

of the main application order the said case number, which has not happened as yet.

- 36.3. On 4 July 2017 Tolmay J, again in this division, issued an order to the effect that Sections 24 and 28 of the New Act were unconstitutional, and that renewal of New Order licenses were therefore not required.
37. The above two orders led to a total of 450 000 holders of new order licences to believe, on the authority of High Court Orders, that they were legally in possession their firearms or would get an opportunity to legalise their possession.
38. On 7 June 2018 the Constitutional Court under case number CCT 177/2017 set aside the Tolmay Order, and left the Prinsloo Order untouched. The effect of this finding was that firearm owners with expired firearm licences were in illegal possession thereof. No opportunity was granted to the persons who did not renew their firearm licences, because of the aforesaid application of the Tolmay Order ("Tolmay disadvantaged group").

A handwritten signature in black ink, consisting of a large, stylized capital 'P' followed by a series of loops and a final vertical stroke.

39. For the past 10 years there has been ongoing tension between the South African Police Service (SAPS) and firearm owners about various issues concerning the licencing and possession of firearms. In particular the different interpretation, implementation and execution by different provincial departments of SAPS and the misinterpretation of firearm laws in general have caused a situation in terms of which about 450 000 firearm owners are now in possession of strictly speaking 'unlicensed firearms', all of which fall in the categories dealt with in sub 1 and sub 2 of paragraph 32 hereinbefore. There is an urgent need to address the untenable position of these unlicensed firearm owners. The majority of the affected persons desperately seek an opportunity to renew their expired, and/or Old Order licences in order to be in legitimate possession of their firearms.
40. The intention of the First and Second Respondents is to use this amnesty as a means to deal with formerly licensed firearms as if they fall in the same category as the out-and-out unlicensed firearms, thus making it difficult, if not impossible, to return these firearms to the register of licensed firearms.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller, more complex mark.

41. Until February 2016 the SAPS accepted that the Prinsloo Order applied to all licences issued in terms of the Previous Act, irrespective whether it had been renewed or not in terms of the Act.
42. On 16 February 2016 the previous National Commissioner of the South African Police Service, General Pahlane, issued a written directive that the Prinsloo Order was only applicable to licences that had not “migrated” to the new Order. **Annexure “HE6”** hereto is copy of the Pahlane directive.
43. The correctness of this interpretation is hotly disputed, and the subject of litigation to have it set aside.
44. Following the Tolmay Order the SAPS turned away thousands of firearm owners who wanted to renew their licences. SAPS officials adopted the position that in terms of the Tolmay Order, it was no longer required that firearm owners whose licences were about to expire, had to be renewed, and that such affected firearm owners should await the outcome of the Constitutional Court judgment.
45. Between the perceived 200 000 and 300 000 firearm owners, who still had valid licences, and time, to renew their licences when the

A handwritten signature, possibly 'BA', is written in the bottom right corner of the page. It consists of a large, stylized loop followed by the letters 'BA'.


Tolmay Order was issued, did as a result thereof not re-licence their firearms.

46. After the Constitutional Court judgment, SAPS through their spokesperson, Brigadier Naidoo, publicly threatened firearm owners whose new regime licences had expired with arrest and prosecution, and insisted that all "*illegal firearms*" must be handed in at the SAPS to avoid arrest and prosecution.
47. The effect of the Constitutional Court judgment and Pahlane's directive to his subordinates rendered was, all firearms of which licences had expired to be in "*illegal possession*" of the possessors thereof. Such firearms could consequently not be sold to firearm dealers or to private persons, they could also not be re-licensed, and the only solution was to hand it to the SAPS for destruction.
48. Immediately after the Constitutional Court judgment, the SAPS commenced making arrangements to confiscate firearms that were in the possession of persons whose new regime licences had expired. These arrangements included that surrendered firearms had to be transported after receipt thereof on a daily basis to SAPS provincial head offices. This arrangement was totally impractical,



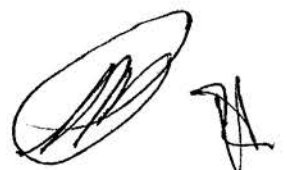
and interprets that the SAPS admit that they could not safe keep firearms at station level. The public also had, as a result of the admitted theft of thousands of firearms and loss of millions of rounds of ammunition from police custody, no faith in their own ability to keep firearms or ammunition in safe custody.

49. Section 121 of the Act, read with Schedule 4, and the provisions of the Criminal Law Amendment Act, 105 of 1997, provides that anyone who is illegally in possession of a semi-automatic firearm (which includes a pistol) faces a compulsory minimum sentence of 15 years imprisonment. The illegal possession of other firearms also carries serious minimum sentences of imprisonment.
50. Registrar of Firearms is vested with a discretion to extend any period contemplated in section 27 of the Act, which deals with the period of validity of firearm licences.
51. The Second Respondent has however refused to apply Section 28(6) of the Act to provide for the late renewal of expired firearm licences, which in the respectful opinion of the Applicant and its members, would have offered a solution to the predicament which persons find themselves in and who were affected by the issues

A handwritten signature in black ink, consisting of a large, stylized capital 'D' followed by a series of loops and a final flourish.

which were raised before the Honourable Justice Prinsloo and the Tolmay Order.

52. In reaction to the Pahlane directive and the threats by the SAPS to confiscate firearms of which the licences had expired and to arrest and prosecute such firearm owners, the Gun-owners of South Africa ("GOSA") brought an application to set the Pahlane directive aside and to provide for an extension of time periods for renewal of licences as prescribed in Sections 27 and 28(6) on good cause shown.
53. On 27 July 2018 the Honourable Justice Prinsloo heard the application in the Gauteng Division, Pretoria and gave another interim order under case number 46684/2018, of which **Annexure "HE7"** hereto is a copy.
54. GOSA also applied for a declarator that the time periods referred to in Section 27 and 24(1) of the Act should be extended in terms of Section 28(6) of the Act, so that persons who hold expired firearm licences to apply for the renewal thereof on good cause shown, within a period determined by the court.

A handwritten signature, possibly 'M', is enclosed in a large, loopy oval. To the right of this oval are the initials 'JA'.

55. The Respondents are appealing the interim order and oppose the main application. It is therefore clear that the Respondents have no interest in assisting persons who were previously lawfully in possession of firearms, and who have now become unlicensed as a result of the aforesaid circumstances, to validate their possession.
56. I also have personal knowledge that the SAPS members in many instances misinterpreted the relicensing provisions to mean that, if an application for renewal was not submitted at least 90 days before the expiry date of the licence, such application was not to be accepted. In most provinces there has been a policy in effect that applications lodged less than 90 days before the expiry date, would be accepted if an application for the condonation of the late licence renewal application had been made. As a result of the refusal to accept re-licencing applications which have not yet expired, thousands of persons have not had the opportunity to re-licence their firearms, and are now regarded to be in illegal possession.
57. A situation has thus arisen where more than 450 000 firearm owners, of whom a significant number are members of the Applicant, are now in possession of unlicensed firearms. These firearm owners are now targeted by the Respondents and the SAPS

Handwritten signature and initials in black ink, located at the bottom right of the page.

as a group, which hold many firearms which are to be taken out of circulation under the guise that they fall within the legitimate target group of an amnesty being illegal firearms.

58. The Respondents' attitude completely ignores the abovementioned complicated history preceding the position in which these unfortunate persons find themselves, and most definitely, the First and Second Respondents and their servants have no desire to assist the affected unlicensed firearm owners to re-licence their firearms in terms of the existing provisions of the Act.
59. It will be demonstrated that although an amnesty in terms of Section 139 of the Act may offer a limited period within which persons whose licenses have expired, may apply for same to be renewed:
- 59.1. The First Respondent has not been less than forthright in his motivation to hastily announce the amnesty;
- 59.2. The SAPS are not prepared and ill-equipped to deal with the practical administration of the amnesty; and

Handwritten signature and initials in the bottom right corner of the page.

59.3. In respect of applications for licence renewals the time allowed for, and the conditions of the amnesty as they appear from the amnesty notice, are completely inadequate to offer a fair opportunity to affected persons to renew their licences, for want of the required manpower, ability to process the volume of application, the lack of safe keeping facilities, and the refusal to accept new licence applications, as stated in the amnesty, without a valid competency certificate.

THE EVENTS PRECEDING THE PUBLISHED NOTICE OF AMNESTY:


60. Since 2017 the SAPS have been trying to convince the Portfolio Committee and Parliament that an amnesty will be successful in getting illegal firearms out of the hands of violent criminals. From the facts and events recorded herein, all of which preceded the publication of the First Respondent's amnesty notice, it will be shown that the First Respondent and the leadership of the SAPS had not been entirely frank in their approach, and aims with the amnesty.

61. The way the amnesty was eventually presented to Parliament on 31



October 2019 speaks of a poorly motivated, ill-advised and procedurally flawed administrative process, the high - water mark of which was the failure to present the proposed notice to Parliament for approval, as is statutorily required. The following facts are relevant to the overall illegality of the amnesty.

62. On 11 September 2019 the Portfolio Committee on Security and Justice was briefed by the SAPS leadership about a possible amnesty. A copy of the minutes and the presentation made by SAPS is annexed as **Annexure "HE8"**. It is pointed out that no reference is made about the relicensing of firearms in terms of the amnesty. The Portfolio Committee did not take a vote on the amnesty proposal and instructed the SAPS leadership to provide more detail and provide answers to several questions which the Portfolio Committee had at the time.
63. During the briefing of 11 September 2019 a draft amnesty notice dated 28 August 2019, signed by the First Respondent, was presented to the committee. **Annexure "HE9"** hereto is a copy of the draft amnesty notice. It should be noted that the draft notice refers to only three police stations where firearms may not be surrendered during the proposed amnesty.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller, less distinct mark.

64. On 23 October 2019 the Portfolio Committee received an update on the possible amnesty from the SAPS leadership who then submitted to the Portfolio Committee that they have performed a risk analysis throughout all the provinces and that there would be 46 police stations that would be excluded from the amnesty. Not one word was mentioned by SAPS that the owners of firearms with expired licences were to be targeted by the proposed amnesty. The list of 46 police stations excluded, do not include the three that were mentioned in the draft amnesty notice.
65. No new draft amnesty notice was presented to either the Portfolio Committee on Security and Justice, or to the Portfolio Committee on Police.
66. During this debate, the Deputy Minister of Police, Mr Cassel Mohale, who then represented the office of the First Respondent, assured the committee that the 450 000 firearm owners with expired licences were not being targeted as part of the amnesty. He added that persons with expired firearm licences will have the right to hand their unwanted firearms in for destruction during this period.
67. On the facts presented, the Portfolio Committee supported the

Handwritten signature and initials in the bottom right corner of the page.

amnesty but decided to add a request to the First Respondent to declare a separate process for the renewal of expired licences that should run concurrently with the amnesty period.

68. From what is stated in the last couple of paragraphs, it should be clear that the Portfolio Committee was misled to believe that the renewal of expired firearm licences would not be part of the target groups of the amnesty.
69. The Portfolio Committee presented their report to Parliament on 31 October 2019. A copy of the agenda of the parliamentary session is attached hereto as **Annexure "HE10"**. Parliament accepted the recommendation of the Portfolio Committee to have a firearms amnesty which would be effective from 1 December 2019 until 31 May 2020.
70. I reiterate that the notice, as required by section 139(2) of the Act, did not form part of the report which served before Parliament, it was not disclosed to Parliament, and not approved by Parliament. Accordingly, there was a substantial non-compliance with the requirements of the Act for a valid amnesty to have been disclosed. Section 139(2)(a) requires the approval of the notice by Parliament

A handwritten signature in black ink, consisting of a large, stylized 'M' or 'W' shape, followed by a smaller, less distinct mark.

as a prerequisite for the validity of an amnesty.

71. In addition to recommending the proposed amnesty, the Portfolio Committee also recorded in its report as follows:

“The Committee also requested the Minister of Police to consider declaring a separate process for the renewal of expired licences that should run concurrently to the amnesty period.”

72. It is clear that at the time when the recommendation was made, the Portfolio Committee believed that the amnesty would not apply to firearm owners with expired licences. The aforesaid recommendation drew a clear distinction between the amnesty and some unknown other administrative process which would provide for the renewal of expired firearm licences.

73. It is also clear that Parliament had no desire to have firearms with expired licences, to be surrendered to the Police pending a new licence application. All indications are that Parliament didn't perceive firearms, with expired licences to be a problem that needed to be dealt with by means of drastic measures.



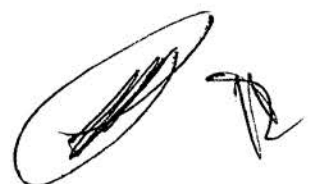
74. When the amnesty notice was published by the First Respondent on 27 November 2019 a different direction was taken in that the notice now made provision for applications for new licences for firearms that had been surrendered. This represented a significant difference in approach to that approved by Parliament, and has far reaching consequences for 450 000 firearm owners.
75. In the event that the First and Second Respondents provided an administrative process for the renewal of expired licenses, as was proposed to Parliament on 31 October 2019, then the affected persons would probably not be obliged to hand in their firearms pending the consideration of the renewal applications. In the case of an amnesty, a person who wants to apply for a new licence, must hand his firearm in. The obvious disadvantage of such a process is that the firearm owner is dispossessed of his firearm in circumstances where he would probably qualify for re-licencing.
76. The more serious threat which the handing in of firearms under the present amnesty represents, is that in terms of the published amnesty conditions, the SAPS will probably either refuse to accept licence applications because the applicant doesn't have a valid competency certificate or reject the new application on the basis

Handwritten signature and initials in the bottom right corner of the page.

that it is an “excess” or “unwanted” firearm. When I deal with the inadequacies of the amnesty conditions, this submission will become evident.

IMPLEMENTATION OF THE AMNESTY:

77. From the public records about the debates before the Portfolio Committee, the SAPS leadership advised the Portfolio Committee that 46 police stations would be excluded from participating in the amnesty. Parliament was also advised accordingly. However, when the First Respondent published the amnesty notice on 27 November 2019, the notice excluded only 3 police stations from accepting firearms in terms of the amnesty.
78. This anomaly raises the question whether the previously 46 excluded police stations were to in fact be able to safe keep firearms that had been handed in there. It is also pointed out that the 3 police stations that are presently excluded, are not included in the list of 46, presented to the Portfolio Committee on 23 October 2019. It therefore seems that 49 police stations had been identified as high- risk stations that needed to be excluded from the amnesty, which is not the case.

A handwritten signature and initials are located in the bottom right corner of the page. The signature is enclosed in an oval, and there are additional initials or marks to its right.

79. Only as late as 5 December 2019, the Second Respondent issued instruction to the SAPS police stations about the way the amnesty must be administered.
80. Even though the Portfolio Committee recommended to Parliament that a dual process for the renewal of expired firearm licences should run concurrently with the amnesty process, the First Respondent made provision in his published amnesty notice for a process where firearms needed to be surrendered and kept pending a new firearm licence application.
81. It is clear that the amnesty has been introduced in an overly hasty and ill-considered manner, which seriously threatens the rights of those firearm owners who want to participate in the amnesty process by handing in their firearms, but subject to the proviso that they have an administratively fair and sustainable opportunity to apply for renewed or for new firearm licences.

THE REAL PURPOSE OF THE AMNESTY:

82. The Respondents' true purpose of the amnesty was revealed by the First Respondent during the public launch of the amnesty on 28

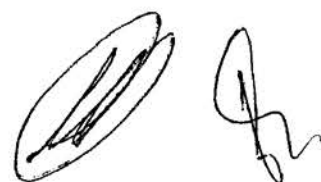
A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a vertical line and a small flourish.

November 2019, when he addressed the Pretoria Press Club. The First Respondent's disclosures have been recorded, and is available in the electronic media.

83. The First Respondent *inter alia* said:

"The declaration of the amnesty period is in the interest of the public. It is also government's endeavour to deal decisively with excess firearms and unwanted firearms that end up in the hands of criminals, therefore increasing the proliferation of firearms."

84. Obviously the First Respondent also has not only targeted illegal firearms, but also "excess" and "unwanted firearms" are in his sights with the amnesty. This aim is *ultra vires* the Act. Section 138 aims an amnesty at "unlawful possession of a firearm or ammunition" and Section 39(1) requires that an amnesty notice must result in "the reduction of the number of illegally possessed firearms". No mention is made of "excess" and "unwanted firearms" or how it will contribute to the reduction of firearms that are being used in the perpetration of crime.

Handwritten signature and initials in the bottom right corner of the page.

85. During the media address the First Respondent stated:

"Those with lapsed licences must hand in their weapons. They should surrender their firearms to apply for licences."

86. The First Respondent also demonstrated his true intentions by remarking:

"Firearms are the enemy of our society."

87. This remark was similar to what the First Respondent has said earlier in public, when he remarked that *"it will be best if only the police have firearms."*

88. During the press conference forming part of the launch, the First Respondent further stated:

"After the six month period we will do everything by all means to get those guns, if it means we go house to house that is what we will do."

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller, more fluid signature.

89. It is therefore clear that the First Respondent has an ulterior motive to disarm firearm owners, not criminals with firearms. The First Respondent uses the amnesty to unfairly target persons with expired licences, and then threatens that, if they do not hand in their firearms during the amnesty period, they will be arrested and prosecuted with the assistance of the Second Respondent.

LACK OF PUBLIC PARTICIPATION:

90. A fundamental inadequacy in the process which preceded the publication of the amnesty notice, was the failure or refusal by the First and Second Respondents, the leadership of the SAPS, the Portfolio Committee and/or Parliament to allow public participation and to consider submissions by the interested firearm owners' community regarding a possible amnesty.
91. The Applicant has been a founder member of the Hunters Forum which was created during September 2004 in order to provide a forum for all the accredited hunting associations, which represent approximately 105 000 hunters to meet with the SAPS on a regular basis about firearm related issues. Until about 2017 meetings between the Hunters Forum and the SAPS firearm management

A handwritten signature in black ink, located at the bottom right of the page. The signature is stylized and appears to be a cursive or semi-cursive script.

were held every 3 to 4 months in what was described as the meetings of the SAPS/ Hunters Consultative Forum.

92. The SAPS /Hunters Consultative Forum was instrumental in ironing out the initial problems in respect of the implementation of the Act when it was put into operation, such as issues concerning administration of the implementation of the Act, dedicated status certificates, endorsement letters, defining "active participation", training standards, etc.
93. The Hunters Forum and its members also had access to and good cooperation with the Civilian Secretariat of Police, who is responsible for amendments to the Act.
94. During or about 2016/2017, when the constitutionality of the re-licencing provisions were challenged, SAPS started to show reluctance to continue with the SAPS/ Hunters Consultative Forum meetings.
95. On 1 September 2017, I attended a meeting of the Portfolio Committee under chairmanship of Mr Beukman and complained about the unwillingness of SAPS to continue with discussions and



the lack of cooperation from SAPS with the Hunters Forum. The chairman stated that it was critical that there needed to be constant engagement with the stakeholders, whether there were court cases or not. An undertaking was given by Lt Genl Masemola that the concerned stakeholders would be engaged by the SAPS about matter concerning firearms and the licencing of firearms and that he would the SAPS / Hunters Consultative Forum meetings. This unfortunately didn't realise.

96. On 9 November 2018, Juan Kotzé, Hardus Els and myself, on behalf of the Applicant, had a meeting with Brig Mabule, who is a high-ranking officer at the Central Firearms Registry ("CFR"), who used to infrequently attend the SAPS / Hunters Consultative Forum meetings. Our purpose was to tell him that there was a definite need for effective communication on a high level between SAPS and firearm owners and we asked him when the meetings could continue. His attitude was that it was impossible to talk "with all the ongoing litigation" between the firearm interest groups and SAPS. On the question when he believes the discussions could continue, he replied that it would be *"when all the problems have been solved."*

A handwritten signature in black ink, consisting of a large, stylized 'M' or 'E' followed by a smaller, more fluid signature.

97. It thereafter became clear that the SAPS were working on an amnesty. The Hunters Forum mandated Mr Juan Kotzé (a member and legal advisor of the Applicant) and Mr Fred Camphor (SA Hunters) to engage in discussions with the First Respondent to discuss the amnesty. On 11 July 2018 Messrs Kotzé and Camphor met with Adv Chemane, the First Respondent's legal advisor. They explained the complications in respect of firearms that had not been renewed and made proposals to solve the problem. Adv Chemane undertook to report back to the Hunters Forum within a week or two, but until today, no response has been received.
98. Some of the issues which were of concern to the Hunters Forum included the misconception that an amnesty would also apply to "unwanted" and "excess" firearms. It also became clear to the Applicant that the SAPS would continue with the Pahlane interpretation that all firearms which migrated from licencing under the Previous Act to licencing under the Act, and which licences had expired, caused (on the Pahlane interpretation) those firearm owners to be in unlawful possession of their firearms and would face the possibility of being arrested and charged.



99. The Applicant instructed Mr Kotzé as its attorney to engage with the First and Second Respondents. On 15 October 2019, Mr Kotzé hand delivered the letter, which is attached hereto as **Annexure "HE11"** to all the addressees. It is pointed out to the First and Second Respondent that their actions are *ultra vires* the Act insofar the SAPS intended to target firearm owners whose licences had expired, and treat them as criminals. The letter was intended to make the Respondents to rethink the situation. This letter however had no effect and he did not even elicit an acknowledgement of receipt or a reply from the offices of the First and Second Respondents.
100. On 23 October 2019, the SAPS informed the Portfolio Committee that the amnesty will have an impact to reduce serious violent crime, but did not disclose their real intention, namely to lay their hands on 450 000 firearms of which the licences had not been renewed.
101. On the Applicant's instructions, Mr Kotzé sent the letter attached hereto as **Annexure "HE12"** to the Chairperson of the Portfolio Committee, Ms Joemat-Pettersson. In this letter he alerted her that the process has been abused and he requested the opportunity for

Handwritten signature and initials in the bottom right corner of the page.

an interview. Notwithstanding his warning and request, the Committee's report supporting the amnesty was tabled in Parliament.

102. Mr Kotzé received no reply from Ms Joemat-Pettersson and when he followed up, her office informed him that they had received his letter but that the invitation for an interview was only open for the media.
103. The situation became even more urgent and complicated when it came to the Applicant's notice that a Mr Johan Du Randt had been convicted on 3 October 2019 in the Gauteng High Court, Palm Ridge under case number SS127/2018 (DPP REF 10/2/11/1-007/2018) on a charge of the illegal possession of a firearm.
104. On 6 January 2018, Mr Du Randt, the owner of a security company was requested by his client, an owner of a farm, to stop and recover a tractor which was being driven by one of the farmer's drivers whilst being under the influence. During his pursuit of the tractor, Mr Du Randt fired shots at the driver in the belief that other persons' lives were in danger and fatally wounded the driver. Mr Du Randt was arrested for murder and was ordered as part of his bail conditions to hand all his firearms over to the SAPS. Mr Du Randt

Handwritten signature and initials in the bottom right corner of the page.

had another firearm, (that was not used in the shooting) which was kept in his safe. On 15 January 2018, he handed the firearm, of which the licence had expired during 2014, over to the SAPS in compliance with his bail conditions. Mr Du Randt also held a licence that had been issued in terms of the Previous Act. Mr Du Randt was charged with the illegal possession of this firearm and has been convicted thereof by Judge Manama.

105. It is important to note that the alleged unlawful possession of the firearm (on 15 December 2018) fell squarely within the period when the Tolmay Order applied. Notwithstanding his old regime licence and the Tolmay Order, Mr Du Randt was convicted for inter alia the unlawful possession of the firearm and is now awaiting sentencing, that will start on 12 December 2019. It is respectfully submitted that Mr Du Randt should not have been convicted. The facts of this case offer an example of how the present approach to the possession of a firearm of which the licence had expired, may lead to injustice.

106. The Applicant instructed Mr Kotzé to inform the Director of Public Prosecutions of the situation and to request a meeting in order to discuss the evident incorrect approach to a firearm owner who found himself in the Tolmay disadvantaged group. Despite Mr

A handwritten signature and initials in the bottom right corner of the page. The signature is a cursive-style name, and the initials are a stylized 'MD' or similar, written in a separate, more angular script.

Kotzé's approaches to the Director of Public Prosecutions, through a letter annexed as **annexure HE 13**, and a personal consultation with the relevant prosecutor, Adv Britz, no-one was willing to look into and set policy to not prosecute in similar situations. It is clear that thousands of firearm owners may find themselves in the same position and that the Director of Public Prosecutions is not an effective filter to avoid prosecutions - and even convictions.

107. On 4 December 2019, Mr Fred Camphor (SA Hunters) wrote the letter that is attached as **Annexure "HE14"** to the First Respondent setting out all his efforts to gain access to public participation concerning the problems surrounding the administration of the Act in general and the amnesty in particular. All Mr Camphor's requests to be heard were also ignored.
108. I attach as **annexure HE 15** an affidavit from Mr Stephen Palos, the chairman of the Hunters Forum and the Confederation of Hunting Associations (CHASA), which represent 23 hunting associations. It shows the total lack of cooperation or recognition from SAPS and the Civilian Secretary of Police.



109. It is also pointed out that the Hunters Forum and The Gun Collectors Association was during the previous amnesty invited to take part in the Amnesty oversight committee. During 2010 Messrs Kotzé, Venter and Webb spend 6 months assisting the SAPS to administer the amnesty. Their communication with member associations and the public were important and contributed to the fact that almost 43 000 firearms were handed in during the previous amnesty. Mr Kotzé's inspections also pointed out the deficiencies in the previous amnesty. This time round, no firearm owners' associations are involved in the present amnesty and it will lack in credibility and communication from the SAPS amnesty administration to the firearm owners community, which are key to a successful amnesty. Only Gun Free South Africa have seemingly been invited to assist with the implementation of the present Amnesty.

110. SAPS don't communicate with civil society on these issues.

111. From the above, it is submitted that it should be clear that the Respondents refuse to engage with organisations who represent firearm owners and that no opportunity had been given to interested parties, such as the Applicant, to make representations to the

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a smaller, less distinct mark.

authorities about the position of firearm owners whose licences have expired and who would be affected by an amnesty which is declared in terms of the Act.

112. Had the Applicant and other firearm stakeholders been afforded an opportunity to make representations to the Respondents, the Portfolio Committee and/or the leadership of the SAPS before an amnesty was announced, then they would have made submissions including and concerning at least the following issues, namely:

112.1. An amnesty does not offer the best solution to address the situation of the 450 000 firearm owners whose licences have expired. An extension of the time limits for making licence renewal applications would probably offer the best solution to these firearm owners.

112.2. In the event that the Respondents insist to take the route of an amnesty, then Applicant and stakeholders should be allowed to question whether the public and Parliament can be given timeous and adequate assurances that the SAPS would be properly prepared to receive and safely deal with thousands of firearms.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a final vertical stroke.

112.3. Concerning the application for the renewal of firearm licences during the amnesty process, the Applicant and stakeholders would make submission about practical issues such as whether the SAPS should accept new licence- or renewal applications if the applicants had not yet been issued with competency certificates.

THE INADEQUATE AMNESTY CONDITIONS:

113. The SAPS officials who are responsible for the implementation of the amnesty only received their first briefing about the amnesty on 5 December 2019. Before then, it would have been impossible to perform any functions in respect of the amnesty. There has, except for the declared notice and some vague indications in the press, also until date hereof been no formal SAPS communication with the firearm owning public in respect of the procedure to be followed when one wants to take part in the amnesty.

114. At present there is an arrangement within the SAPS that an applicant for a new firearm licence must possess a competency certificate when he submits his firearm licence application (SAPS 271 form). The period of validity of the competency certificate is



linked to the period of validity of the firearm licence. Once the firearm licence expires, (except if the applicant has another firearm in the same category), the competency certificate expires.

115. With the present instruction to the SAPS police stations participating in the amnesty process, an applicant who wishes to apply for a new licence in respect of a firearm with an expired firearm licence, is thus required to also acquire a competency certificate. The consideration and approval of a competency certificate usually takes approximately 4 to 6 months. In terms of SAPS present policy an application for a new licence can only be received once the applicant has a valid competency certificate.
116. The terms of the amnesty notice provide that an application for a licence should be made within 14 days after the firearm had been surrendered. Unless the Second Respondent changes this instruction, most firearm owners who want to take part in the amnesty and want to apply for the renewal of their firearm licences would not qualify for a new licence because they would not have the required competency certificates.

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'R' shape followed by a series of loops and a final flourish.

117. The Second Respondent has not communicated the details of how to apply for a new licence in terms of the amnesty, with the result that nobody knows what procedure to follow.
118. The amnesty notice orders that all firearms submitted during the amnesty must be ballistically tested. The capability of the SAPS forensic laboratories are seriously questioned. Any delay in this respect will impact on the period that a person, who has surrendered his firearm to apply for a new licence, will be without his firearm that may be needed for self-defence.
119. The First Respondent's remark that amnesty will remove "excess" and "unwanted" firearms out of circulation causes big uncertainty as to what the First Respondent's policy will be in respect of the granting of new licences in respect of firearms, which had been handed in. It is clear that the Respondents want to reduce the number of firearms in circulation.
120. It is also clear that the SAPS are abusing the amnesty process to also include "explosive devices" or "explosives" that are handed in during the amnesty. I attach as **annexure HE 16** the SAPS 548 form that is to be completed as part of the amnesty process. The

Handwritten signature and initials in the bottom right corner of the page.

Act only provides for an amnesty in respect firearms and ammunition. If one is to hand in an explosive device or explosives, the question will arise whether such person is entitled to indemnity in respect thereof. This further serves as an example of ultra vires application of the amnesty process.

121. It is also a well-known fact that the Second Respondent's offices can barely cope with the present demand to consider competency and licence applications. The members of the Applicant have the unfortunate experience of standing in very long queues or being told by DFO's that they have to make appointments, which are often not done to facilitate efficient service, but rather to turn applicants away. This leads to massive frustration to such an extent that most firearm owners are reluctant or even refuse to take part in the process.
122. It was also reported in the press that the SAPS computer system cannot perform the functions necessary to take part in the amnesty process. This will not come as a surprise in view of SAPS overhasty introduction of the amnesty.
123. The requirement that the application for a licence must be submitted within 14 days after the firearm being surrendered, will also cause a

Handwritten signature and initials in the bottom right corner of the page.

problem in the case of a dedicated hunter or sports shooter. Such an applicant must provide proof of his membership of an accredited association and also submit proof that his membership fees have been paid up. Dedicated hunters must prove that they are actively involved in hunting- or shooting activities and some applicants also need letters of endorsement of their applications from their associations. Thus, a large amount of paperwork is needed, which is in particular difficult to obtain during the festive season.

124. It is clear that SAPS focus on the surrendering and destruction of firearms during the amnesty and that the relicensing of firearms received as part of the amnesty receives little or no attention. I attach as **annexure HE 17** a national instruction from the Deputy Commissioner dated 28 November 2019 about the objectives of the amnesty. It should be noted that not one word is stated that the renewal of firearm licences is party of the objectives of the amnesty.
125. This situation will have the effect that the amnesty period is effectively cut down to 3 to 4 months, provided that an applicant has a valid competency certificate and will definitely lead to massive bottlenecks closer to 31 May 2020. The result will be that thousands of firearm owners will abandon the process and either just surrender

Handwritten signature and initials in the bottom right corner of the page.

their firearms, or keep it without a licence to demonstrate civil disobedience. This situation is not fair or in the public interest and the Applicant, who motto is "Responsible and Accountable firearms ownership" cannot allow this situation to develop.

THE CLAIMED RELIEF:

126. The Applicant respectfully maintains that a case has been made out that the amnesty notice is invalid and should be set aside.

127. Regarding the ancillary relief the Applicant maintains that in the event that the First Respondent in future insists to again apply to Parliament for the approval of an amnesty then:

127.1. Sufficient and fair opportunity must be given to all firearms stakeholders to make submissions to the Respondents, the Portfolio Committee and/or Parliament about at least the manner in which the position of firearm owners, whose licences have expired, must be dealt with.

127.2. The Respondents should also consider and make provision for a fair and practical process to accept and consider

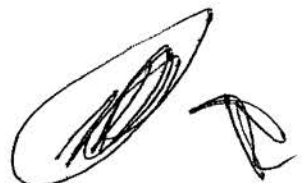
Handwritten signature and initials in the bottom right corner of the page.

applications for the renewal of expired firearm licences, whilst taking into account the practical challenges which face applicants who are not in possession of valid competency certificates.

127.3. In addition, to make provision that firearm owners with lapsed licences who want to renew licences under the Amnesty, must be allowed to keep such firearms in their own possession. It is pointed out that the SAPS know exactly who these people are and where they live.

127.4. Once the amnesty notice is declared invalid, then the possible confiscation of firearms and the prosecution of firearm owners whose licences have expired must be stayed pending the declaration of a further amnesty. In this regard it is pointed out that the GOSA interim interdict already provides such protection.

128. It is submitted that the relief as claimed in the notice of motion sufficiently covers the abovementioned areas of concern.

A handwritten signature or set of initials, possibly 'D' or 'R', enclosed within a large, loopy oval shape.

129. It is further submitted that, based on the fundamental right to fair and legitimate administrative justice, the Applicant and all its interested members, and all other firearm owners, have the right to claim that a fair and just process must be followed during the consideration of the declaration of an amnesty. The facts of this matter show that the Respondents have dismally failed in the duty to act administratively fair. It is significant that section 129 of the Act is introduced by a requirement that an amnesty must be in the public's interest, yet in this case, it was absolutely ignored.
130. The reasonable apprehension exists that if no relief, as is prayed for herein is granted, then the Respondents would probably again exclude the Applicant and other firearm stakeholders to participate in the decision-making process and that the Respondents would probably prejudice the interested persons, as has been demonstrated in this application.

URGENCY:

131. The issues in this application requires the urgent attention of the above Honourable Court because of the following:

Handwritten signature and initials in the bottom right corner of the page.

- 52 -

131.1. The amnesty is inherently invalid because of non-compliance with the provisions of Section 139(2). When the parliamentary Portfolio Committee on Police on the Firearms Amnesty dated 24 October 2019" ("the Portfolio Committee") presented their report to Parliament on 31 October 2019, the Portfolio Committee did not present Parliament with the amnesty notice which is required in terms of Section 139(2)(a) to be approved by Parliament. Annexure "HE10" hereto is a copy of the agenda of the parliamentary session of 31 October 2019 which contained the report of the Portfolio Committee, from which the amnesty notice, itself, is absent. I attach hereto as **annexure HE 18** the press release issued by Mr Andrew Whitfield, (DA shadow Minister of Police) a member of parliament who was present during the parliamentary session on 31 October 2019 confirming that the report was presented to Parliament without the amnesty notice being made available to parliament, as is required. It appears that the First Respondent and Parliament has also not set the amnesty aside as was requested by Mr Whitfield. It should be clear that the amnesty will proceed notwithstanding the serious deficiencies been brought to the relevant parties'



- 53 -

attention.

131.2. There is accordingly no alternative available to the Applicant other than to approach the Honourable Court for the relief.

131.3. The Applicant has been promised an affidavit by a member of parliament, who was present at the relevant parliamentary session, but at the time when this urgent application was issued, it had not been received. The Applicant can no longer delay the issuing of the application. The Applicant will serve and file it as soon as it has been received.

131.4. The failure to present the amnesty notice to Parliament is fatal to the validity of the amnesty and the subsequent publication of the amnesty notice was ultra vires the requirements of the Act. In these circumstances the publication of the amnesty notice must be set aside as matter of the urgency.

Handwritten signature and initials in the bottom right corner of the page.

131.5. The limited amnesty period of six-month commenced on 1 December 2019. The SAPS administers the amnesty on the basis that all firearm owners who hold expired licences are in unlawful possession of such firearms, and have to surrender same to the police to enable them to apply for new licenses, failing which, they would upon the expiry of the amnesty period, face prosecution for the illegal possession thereof.

131.6. Thousands of firearm owners will, in the mistaken belief that they are taking part in a valid, lawful, and sustainable amnesty, start to surrender their firearms to the police in order to avoid prosecution, be afforded the opportunity to legalize their situation, while the amnesty is flawed, and the conditions thereof unsustainable. It is necessary that the unlawful amnesty must be set aside as a matter of urgency in circumstances it will not offer indemnity to uninformed amnesty participants against criminal prosecution for the possession of firearms with lapsed licences.

131.7. The police will ultimately destroy firearms received in terms of the amnesty if an application for a licence is not

Handwritten signature and initials in the bottom right corner of the page.

- 55 -

submitted, or not timeously submitted, or refused, in which event firearm owners will suffer irreparable harm in the form of expropriation without compensation, as no compensation will be payable in respect of such firearms.

131.8. Firearms will be handed in at police stations that cannot safely keep firearms. There are no assurances that arrangements for the safe transportation and custody of firearms are in place to ensure that firearms which were surrendered as part of the amnesty, will not get lost from police control or destroyed whilst licence renewal applications are considered. These practical considerations have not been addressed when the amnesty was considered, and announced. For instance, the SAPS leadership informed the parliamentary Portfolio Committee which dealt with the proposed amnesty on 23 October 2019 that 46 police stations would be excluded from taking firearms in because of safety concerns. On this basis the Portfolio Committee was willing to recommend the proposed amnesty to Parliament. However, in the published notice declaring the amnesty, only three police stations are excluded. This implies that, based on the earlier

A handwritten signature and initials in the bottom right corner of the page. The signature is a large, stylized cursive mark, and the initials are a smaller, more legible mark to its right.

submissions to the Portfolio Committee, 46 police stations which did not have the necessary security, would now have to accept firearms as part of the amnesty. There is no doubt that neither the Portfolio Committee nor Parliament had been made aware of these inadequacies before the matter was tabled on the 31st October 2019. The unpreparedness of the SAPS to deal with the handing in, and safe keeping of thousands of firearms demand the urgent setting aside of the amnesty.

131.9. The lack of adequate safety and control measures could notionally be addressed, but in the meantime the clock is ticking for the limited amnesty period, with prejudice to the rights of firearm owners to have their firearms handled in a safe manner and to have a fair opportunity to apply for the renewal of their licences, looming.

131.10. The most plausible reaction to the invalid and unsustainable amnesty would be for thousands of firearm owners, whose licences have expired, to refuse handing in their firearms, which in turn is unnecessary civil disobedience, and could even result in unrest, which can only be prevented by the

A handwritten signature in black ink, appearing to be a stylized representation of the letters 'B' and 'A'.

- 57 -

decisive and urgent intervention of the above Honourable Court.

131.11. There is a reasonable and justified apprehension that affected firearm owners will be wrongly arrested and prosecuted at the expiry of the amnesty period, whilst the amnesty was in fact invalid *ab initio*.

131.12. Firearm owners who want to relicense their firearms, will have to be without their firearms for months (if not years), while they stand unprotected, and exposed to serious violent crime.

131.13. Above all, it is in the public interest that the legality of the amnesty be determined at the soonest possible opportunity in order to create legal certainty about a fundamental aspect which affects the property rights, and right to administrative justice of the thousands of affected citizens.

132. In further support of this application I attached hereto as **Annexures "HE19"** and **"HE20"**, the confirmatory affidavits of Messrs Kotzé and Camphor.

A handwritten signature in black ink, consisting of a large, stylized 'J' or 'I' followed by a smaller, more complex flourish.

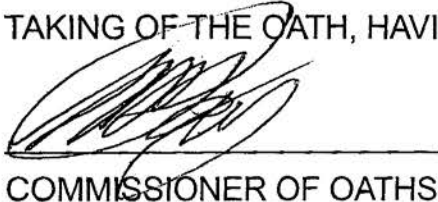
- 58 -

133. In the premises, I pray for an order in terms of the notice of motion.



DEPONENT

SIGNED AND SWORN TO BEFORE ME AT Pretoria
ON THIS 11 DAY OF DECEMBER 2019, THE DEPONENT HAVING
ACKNOWLEDGED IN MY PRESENCE THAT SHE KNOWS AND
UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THE PROVISIONS
OF GOVERNMENT GAZETTE R1478 OF 11 JULY 1980 AS AMENDED BY
GOVERNMENT GAZETTE R774 OF 23 APRIL 1982, CONCERNING THE
TAKING OF THE OATH, HAVING BEEN COMPLIED WITH.



COMMISSIONER OF OATHS

CAPACITY:

FULL NAMES:

PHYSICAL ADDRESS:

INALIZE DU PLOOY
Kommissaris van Ede/Commissioner of Oaths
Praktiserende Prokureur/
Practising Attorney RSA
3^{de} Vloer/3rd Floor 339 Hilda Str/St 339
Hatfield, PRETORIA