



NATSHOOT

NATIONAL HUNTING & SHOOTING ASSOCIATIONS

Responsible and Accountable Firearms Ownership

SAPS Accredited Hunting Association (FAR 1300050) and Sport-shooting Association (FAR 1300088)

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Sir,

THE DRAFT FIREARMS CONTROL AMENDMENT BILL, 2021

Your invitation for public comments on the topic of this document, as contained in Notice No. 437 on page 149 of the Government Gazette No. 44593 of 21 May 2021, has reference.

1. INTRODUCTORY REMARKS:

- 1.1 The National Hunting and Shooting Association (NHSA - Natshoot) is representative of an excess of 46 000 paid up members who are all firearm owners who own all categories of licenced firearms (including members who have competency to own and use black powder firearms). NHSA is accredited with the South African Police Service (SAPS) as hunting and as sport shooting association.
- 1.2 Natshoot and its members have a material interest in the attempt by the Civilian Secretariat for Police ("the Secretariat") and the Cabinet to substantially amend the existing Firearms Control Act, 60 of 2000, (as amended) ("FCA").



- 1.3 Natshoot is of opinion that the procedure followed in drafting the 2021 Bill did not provide for fair and reasonable public participation before it was accepted, in its present form, as the policy document of the Cabinet.
- 1.4 Natshoot is opposed to the 2021 Bill in its entirety.
- 1.5 Insufficient time is afforded to sensibly comment to the 2021 Bill.
- 1.6 Insufficient information was provided to enable interested parties to consider, interrogate and comment to the 2021 Bill.
- 1.7 The 2021 Bill alone consists of 138 printed pages and contains 83 sections.
- 1.8 The “Memorandum on the Objects of the Firearms Control Amendment Bill, 2021” consists of 40 printed pages.
- 1.9 The Socio-Economic Impact Assessment report, which is relied on, is based on data collected until 2016 and contains references to documents and events which were not made publicly available before the 2021 Bill was announced on 21 May 2021 in the Government Gazette.
- 1.10 Natshoot has fundamental difficulties with the manner in which the 2021 Bill became the official policy of the Cabinet and the limited time and information, as provided by the Secretariat to comment on same.
- 1.11 The 2021 Bill limits and threatens several fundamental rights which are contained in the Constitution of the Republic of South Africa, 1996 (“the Constitution”) which limitations and threats will be dealt with herein below.
- 1.12 In such circumstances, where the public interest and the limitation of fundamental rights will be affected by the 2021 Bill, the interested and effected public must be offered a fair and reasonable opportunity to interrogate, consider and comment on the 2021 Bill.
- 1.13 Given the short timeframe and limited information which was provided to consider the 2021 Bill, Natshoot, and the public at large, have not been afforded a fair and reasonable opportunity to interrogate, consider and comment on the 2021 Bill.

- 1.14 Natshoot records that this commentary by Natshoot is provisional and not representative of all the criticisms and grounds of objections against the approval of the 2021 Bill.
- 1.15 It is pointed out that the so-called Wits report, on which the socio-economic report is based (which forms the basis of the 2021 Bill), was only made available to the public at the end of June 2021. All indications are that incorrect assumptions lay at the basis of the 2021 Bill if the so-called Wits report was its main base of information. A thorough analysis of the Wits report could not be done in the limited time afforded and Natshoot reserves the right to present further comments on the accuracy and interpretation of the Wits report and the impact thereof on the 2021 Bill.
- 1.16 The rights of Natshoot and its members are reserved to supplement this commentary and/or take appropriate legal action if the Secretariat and/or Cabinet persist with promoting the 2021 Bill.

2. THE STRUCTURING OF THE SUBMISSION BY NATSHOOT:

With reference to the afore stated introduction, this commentary of Natshoot to the 2021 Bill is structured into three main chapters, dealing:

- 2.1 **Firstly**, with the challenge to the validity of the procedure which was followed thus far to prepare and initiate the 2021 Bill for public comment, which procedure led to the adoption the 2021 Bill as the accepted policy of the Cabinet on amending the Firearms Act without allowing public participation, before coming to the policy decision (page 4);
- 2.2 **Secondly**, the limitation of fundamental rights contained in the 2021 Bill, which is germane to the objection to the whole of the 2021 Bill (page 13); and
- 2.3 **Thirdly**, the absolute majority of components contained in the 2021 Bill, which are fundamentally flawed, impractical and/or irrational (page 28).

3. **CHAPTER 1: CHALLENGING THE PREPARATION AND INITIATION OF THE 2021 BILL:**

3.1 Natshoot challenges the validity of the process which was followed to prepare and initiate the 2021 Bill on the following broad grounds, namely:

3.1.1 There has been non-compliance with the requirement to provide for public involvement in the legislative process; and

3.1.2 The information which had been used by the Secretariat to motivate the Cabinet to accept the 2021 Bill was biased, misrepresented and/or exclusive of other relevant considerations.

**PROCEDURAL NON-COMPLIANCE WITH THE REQUIREMENT
TO ALLOW FOR PUBLIC INVOLVEMENT IN
THE LEGISLATIVE PROCESS:**

3.2 The first step in preparing a Bill that is to be submitted to a particular legislature (National or Provincial) is to determine whether there is a need for a new legislative rule or set of rules to be introduced or whether an existing set of rules should be amended.

3.3 Once this is decided, the next steps will be the formulation of draft legislation, consultation with interested and probably affected persons.

3.4 Then follows the finalisation of the legislative proposal with a view to its introduction.

3.5 This process may be supplemented by the publication of a Green Paper (which sets out the policy options for comment) followed by a White Paper in which government takes an official policy stand. The final drafting of a Bill normally follows from this.

3.6 Initiation is therefore the preparatory step before a Bill is introduced in the relevant legislature.

- 3.7 Although most Bills may be initiated by the Executive Authority,¹ other members of legislatures may also initiate Bills.²
- 3.8 The Legislative Authority of the national sphere of government is vested in Parliament.³
- 3.9 After a Bill is initiated, it is introduced to Parliament where the principle is presented. The detail stages thereafter follow in considering the Bill. Most Bills are referred to special committees before consideration or decision by parliament itself is requested.
- 3.10 After consideration of a Bill, it must be adopted, amended, or rejected by each House of Parliament. The South African Parliament consist of two houses, namely the National Assembly (“the NA”) and the National Council of Provinces (“the NCoP”). If adopted by both houses, it is referred to the President for approval, and only after the President has assented, then the new Act is promulgated. Only then does a Bill become an Act of Parliament.
- 3.11 The 2021 Bill concerns legislation which would not be affecting provinces. If the 2021 Bill makes it to the NA and is there accepted it must then be referred to the NCoP for approval, whereafter it goes to the President for assent.⁴
- 3.12 The National Executive Authority of South African government vests with the President and the Cabinet, who in terms of Section 85(2)(a) of the Constitution ultimately has the power to implement national legislation.
- 3.13 All indications are that the Secretariat presented the 2021 Bill, together with the Socio-Economic Impact Assessment (“the Socio-Economic Assessment”) and Memorandum on the Objects of the Firearms Control Amendment Bill, 2020 (“the Memorandum”)⁵ to the Cabinet,⁶ where after followed the Government Notice, published in the Government Gazette, 21 May 2021, No. 44593.
- 3.14 A substantial amendment to an important Act having National application is being initiated by the Secretariat, who persuaded the Cabinet to adopt as its policy about the amendment of the Firearms Act, the 2021 Bill and then

¹ Consisting of the President and the Cabinet, as per Section 85(1) of the Constitution

² Section 73(2) of the Constitution

³ Section 43(a) of the Constitution

⁴ Section 75 of the Constitution

⁵ Note that the memorandum refers to “2020” and not “2021”

⁶ Paragraph 6 of the Memorandum

approved the 2021 Bill for publication in the Government Gazette.

- 3.15 Despite the intention to publicise the 2021 Bill in the Government Gazette, same had not happened. In the Government Notice of 21 May 2021 interested persons are directed to visit the Secretariat’s website to access the 2021 Bill, Socio-Economic Assessment and Memorandum.
- 3.16 It is unknown what the status of the 2021 Bill is (whether it is a Green Paper or White Paper). This issue requires clarification. However, as submitted above, the indications are that the 2021 Bill is a White Paper. This is significant because the 2021 Bill is not only in draft form, but it was also adopted as policy in a White Paper before there was any public participation or involvement.
- 3.17 Natshoot submits, that because of omitting public involvement, the adoption of the 2021 Bill as the policy of the Cabinet has been inherently unfair, biased, and uninformed.
- 3.18 In the case of *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 222 (CC) it was held that under the Constitution, the obligation to facilitate public involvement during the legislative process must conform to the Constitution in both content and procedure. The process in which legislation is adopted must also comply with what the Constitution requires. Failure to comply with manner and form requirements renders the legislation invalid. The obligation to facilitate public involvement is a material part of the law-making process.⁷ The Constitutional Court remarked that there is support for this view in other jurisdictions.⁸
- 3.19 Section 72(1)(a) of the Constitution imposes a duty on the National Council of NCoP to “*facilitate public involvement in the legislative and other processes of the Council and its committees*”. In the *Doctors for Life* case several laws were adopted without compliance with the requirements of public participation, which caused the Constitutional Court to find that the laws were invalid.
- 3.20 In terms of Section 59(1)(a) of the Constitution the NA must “*facilitate public involvement in the legislative and other processes of the Assembly and its committees...*”, thus a similar provision as Section 72(2)(a).

⁷ At par [207] – [209]

⁸ At par (210) and footnote 181

- 3.21 In terms of Section 85(1) of the Constitution the President exercises the executive authority, *together* with the other members of the Cabinet, by:
- a. Implementing national legislation except where the Constitution or an Act of Parliament provides otherwise (Section 85(1)(a)); and
 - b. Developing and implementing national policy (Section 85(1)(b)); and
 - c. Preparing and initiating legislation (Section 85(1)(d)).
- 3.22 Accepting that the 2021 Bill, is representative of the Cabinet’s official policy endorsement of the proposed amendments to the Firearms Act:
- a. There exists no evidence that the development of such policy was done by the President and the Cabinet;
 - b. Ostensibly, the invitation in the Government Gazette of 21 May 21 is intended to invite public involvement in the legislative process, concerning the 2021 Bill;
 - c. The invitation followed after the Secretariat had already persuaded the Cabinet (without the President) to accept the 2021 Bill, in its present form as the Cabinet’s policy on the amendment of the Firearms Act;
 - d. The policy decision was taken after only considering the presentations of the Secretariat, without any objective public involvement, and;
 - e. According to the Government Gazette of 21 May 2021 comments to the 2021 Bill must be made to the Secretariat;
- 3.23 The Secretariat advocated to the Cabinet that the 2021 Bill should be adopted as policy;
- 3.24 The Secretariat does not have the Constitutional authority to either develop and implement policy or to prepare and initiate legislation;
- 3.25 The present invitation to comment offers no guarantees that the Executive Authority, consisting of the President and the other members of the Cabinet would even see or consider the comments, thus rendering the comments of interested persons nugatory as public involvement; and
- 3.26 There is no evidence that the invitation to comment on the 2021 Bill is a genuine effort by the NA to “*facilitate public involvement in the legislative process*” as is required in Section 59(1)(a) of the Constitution.

**THE BIASED, MISREPRESENTED AND/OR LIMITED INFORMATION
RELIED UPON BY THE SECRETARIAT:**

- 3.27 To determine whether adequate, fair, and reasonable opportunity for public involvement has been afforded there must be a critical review of:
- a. Who has made representations to the policy makers (Cabinet) to elicit their endorsement of the 2021 Bill;
 - b. What information was presented to Cabinet to persuade Cabinet to take a definitive policy position;
 - c. Whether the interested public has been provided with the information which is necessary to participate fairly and reasonably in the legislative process, and;
 - d. Whether the time which is allowed for commentary (45 days since 21 May 21) is fair and reasonable.
- 3.28 The Secretariat referred to the following sources of information in the Socio-Economic Assessment and Memorandum:
- 3.29 Paragraph 1, page 98 of the Memorandum mentions a “*Summit on Firearms that was held by the Portfolio Committee on Police*”. No details about when, what was discussed and resolved (if anything) and who attended this summit, is provided.
- 3.30 The Socio-Economic Assessment and Memorandum is completely silent on what contributions, if any, was offered at the Summit by persons and/or organisations who had an interest in opposing the stricter control over the possession of firearms and the reasons for such opposition:
- a. Crime statistics released on 25 October 2017 is relied on without making available same, nor giving any details about what is highlighted as “*increased firearms related crime*”;
 - b. Mention is made of the recovery of “*1,362 illegal firearms and rounds of ammunition*” without stating where the information can be found and whether the figure relates to firearms and/or ammunition;
 - c. Reference is made to the National Development Plan without explaining what percentage of legally or illegally possessed firearms are “*contributing factors to violence and injury*”;
 - d. Mention is made of the sensational claims by the Medical Research Council’s 2012 research about how many firearms had been used to murder women in South Africa, without making available the alleged report and without even mentioning the actual number of murders that are

- committed with licenced firearms. The indications are that the statistics are incomplete and has been manipulated to support an incorrect conclusion;
- e. An “*international study of 2015*” is mentioned which allegedly claims that South Africa has the second highest number of murders committed with firearms, without making the alleged report available or giving any context to the allegation;
 - f. The Secretariat has relied on the ANALYSIS OF THE FIREARMS CONTROL ACT ON CRIME 1994 TO 2014, also referred to as the “Wits Report” in making their presentations to the Cabinet; and
 - g. The organisation known as GunFree South Africa (GFSA), supporting the principle that there should be no privately owned firearms, has been the only public participant who has been consulted by the Secretariat before making its case to the Cabinet.

3.31 The Wits Report as an inadequate and biased source of information requires special mentioning. According to available information the Wits Report was co-authored by Brigadier Mabule, the Chief of the Central Firearms Register. Brigadier Mabule is not an acknowledged researcher, which raises serious doubt about the value and credibility of the Wits report. Brigadier Mabule has a vested interest to promote the policy formulation of the Secretariat. Accordingly, Brigadier Mabule’s central role in the creation of the Wits Report leaves serious doubt about the objectivity of the report.

3.32 What is absent from the Socio-Economic Assessment and Memorandum are the following important issues which may well have been of pivotal importance to the Cabinet to make their policy finding, namely:

- a. The views of parties who are averse to the proposed amendments to the Firearms Act and the reasons therefor had not been disclosed to the Cabinet. All indications are that it was only the opinions of GFSA, which was supposedly offered as public “approval” of the proposed amendments.
- b. No mention is made about the inability of the Police to administer the execution of the current FCA.
- c. The uncertainty about the status of the so-called green firearms licences holders and that of white licence holders, whose licences had expired resulted directly from the Police’s inability to deal with the issues decisively.
- d. The Minister of Police, himself holds the view that all the firearms that are owned by those license holders must be taken out of circulation.
- e. The often-published huge backlog of firearms and competency applications is another example of the Police’s inefficiency to perform the responsibilities designated in terms of the FCA (currently the time span for

finalising applications for new licences and for renewals of licences alike, can take anything between 7 and 10 months).

- f. Had the Secretariat been frank about this aspect and the influence it has on the efficient administration of the possession of firearms, then Cabinet may have been persuaded otherwise about the proposed amendments to the FCA.
- g. Cabinet was not informed about the information and/or statistics concerning which firearms and ammunition had been lost or stolen from licenced firearm owners during the period 1994 to date. The loss of firearms, which fall in criminal hands seems to be part of the rationale for the amendments and therefore it was expected that the information should have been disclosed to Cabinet to consider before the decision to publish the 2021 Bill was made.
- h. No information which contains the statistics about what firearms and ammunition were lost by or stolen from the Police and/or any of the armed forces during the period 1994 to date was presented.
- i. Cabinet was not informed about the matter of Colonels Chris Prinsloo and Naidoo, of the Police logistics department who stole thousands of firearms, that had been handed in for destruction by the Police. During 2016 Colonel Prinsloo pleaded guilty to the theft and unlawful sale of 2,000 firearms to criminal elements, mostly in the Western Cape. Of the 40 years of imprisonment, he was sentenced to (of which 18 years ran concurrently), Colonel Prinsloo did not serve a single day in a prison, but was held in a safe house, because he was supposed to testify in the prosecution of the persons who assisted him to steal and sell the firearms to the gangs in the Cape. Colonel Prinsloo has been released on parole during April 2020 after “serving” a little more than 3 years of imprisonment.

3.33 The Secretariat is challenged to disprove that there are presently no pending cases against any other person who was involved in the theft or illegal sale of the firearms.

3.34 The Prinsloo matter represents a serious dereliction of the Police’s responsibilities to keep firearms in their possession safely and to prevent crime. It would be of particular importance to inform the public and the lawmakers about what percentage of the 2006 to 2015 crime statistics were influenced by the firearms which were stolen by Colonel Prinsloo and other Police members. According to newspaper reports and the book “*Give us more Guns*” by Mark Shaw, more than 1,000 persons had been killed and there were more than 1,000 attempted murders committed with these stolen firearms.

- 3.35 At present Natshoot is not in possession of all the documents and information which can be identified from the Socio-Economic Assessment and the Memorandum. Natshoot will apply for the above information in terms of PAIA.
- 3.36 In the meantime, the Secretariat is encouraged to make available to the public the following documents and/or information:
- a. All documents, agendas, minutes records pertaining to the “*Summit on Firearms that was held by the Portfolio Committee on Police*”, referred to in paragraph 1, page 98 of the Memorandum;
 - b. The crime statistics released on 25 October 2017, which is relied on in the Socio-Economic Assessment;
 - c. The source of the statement that “*1,362 illegal firearms and rounds of ammunition*” was recovered during 2016 – 2017;
 - d. The extracts from the National Development Plan which were relied on by the Secretariat to make its submissions;
 - e. The sources containing the claims by the 2012 Medical Research Council’s report on how many legally owned or illegally owned firearms had been used to murder women in South Africa; and
 - f. The “*international study of 2015*” mentioned in the Socio-Economic Assessment;
 - g. All reports within the possession of the Secretariat which contains the information and/or statistics about what firearms and ammunition were lost or stolen from the Police and/or any of the armed forces during the period 1994 to date;
 - h. All reports within the possession of the Secretariat which contains the information and/or statistics about what firearms and ammunition were lost or stolen from licenced firearms owners during the period 1994 to date;
 - i. All reports within the possession of the Secretariat which contains the information and/or statistics about what firearms and ammunition were lost or stolen from the Police and/or any of the armed forces during the period 1994 to date;
 - j. All reports within the possession of the Secretariat which contains the information and/or statistics about what firearms and ammunition, which were handed in to the Police during firearms amnesties, because of criminal investigations and otherwise surrendered to the Police during the period 1994 to date and which were then lost or stolen from the custody of the Police, and;

- k. All documents and/or information pertaining to the Prinsloo theft and distribution of firearms, including statistical information about which of the firearms that were stolen by Colonel Prinsloo were used in violent crimes.
- 3.37 The time within which interested persons may comment to the 2021 Bill was extended on 30 June 2021 with a further 21 days. Natshoot will make use of the time and submit its comments, subject to the *proviso* that if the abovementioned documents and/or information had not been made available to the public timeously, then such omission shall constitute further confirmation that there has not been a fair and reasonable allowance for public involvement in the legislative process as is required by Section 59(1)(a) of the Constitution.
- 3.38 Natshoot maintains that the additional 21 days is insufficient to allow for fair and reasonable public involvement in the legislative process without access to all above-mentioned documents.
- 3.39 In the above stated premises Natshoot submits that the process which had been followed thus far to prepare and implement the 2021 Bill as the proposed amendment to the FCA, has not complied with the requirements of Section 59(1)(a) of the Constitution.
- 3.40 In conclusion Natshoot submits that:
- a. Accepting that the 2021 Bill is representative of the Cabinet's official policy on the proposed amendments to the FCA, it is evident that the policy position was taken after hearing only the submission of those who favour the reduction of the number of privately owned firearms, namely the Secretariate and GunFree South Africa. Without hearing the concerns of those who hold the opposite position, it can never be said that the Cabinet took a fair and informed decision when making policy.
 - b. The Secretariat elected to offer limited information to the Cabinet in a manner that appears from the Socio-Economic Assessment and the Memorandum as biased of the views of those favouring a reduction in privately possessed firearms;
 - c. The Secretariat misled the Cabinet when it was suggested that there had been wide consultation at the so-called firearms summit. The observation is strengthened considering that nothing was said at the summit on behalf of those who are opposed to private firearms ownership and possession;
 - d. The information which was relied on did not include relevant sources of information which may have been critical to consider whether the 2021 Bill is representative of a need to amend the Firearms Bill;

- e. The opportunity now remains for the public, who has an interest in the proposed amendments of the FCA, to object and/or comment thereto;
- f. To counteract the biased approach of the Secretariat, Parliament must ensure a fair and reasonable opportunity for public involvement in the legislative process;
- g. Fair and reasonable public involvement can only follow if:
 - i. Assurance is given by Parliament that commenting to the 2021 Bill by the public will be seriously considered before the initiation of the 2021 Bill proceeds;
 - ii. A reasonable time is afforded to the public to interrogate, consider, and comment on the 2021 Bill, which period Natshoot proposes would be at least 6 months; and
 - iii. That all the documents and information which the Secretariat relied on to formulate the 2021 Bill, the Socio-Economic Assessment and the Memorandum is made available to the public within the first of the proposed 6 months within which to comment to the 2021 Bill.

3.41 In the above stated circumstances Natshoot reserves the right to:

- a. Formally apply for the provision of the aforesaid information in terms of PAIA; and
- b. To apply for the postponement or extension of the time within which to comment to the 2021 Bill; and/or
- c. To be afforded a further opportunity to make representations and/or to address the Parliamentary Portfolio Committee on Police once the information was made available; and/or
- d. Formally challenge the validity of the legislative process which was followed thus far, should the NA continue to ignore compliance with the requirements of Section 59(1)(a) of the Constitution.

4 **CHAPTER 2: THE FUNDAMENTAL RIGHTS WHICH ARE AFFECTED BY THE 2021 BILL:**

4.1 In terms of Section 36(1) of the Constitution, the Bill of Rights in the Constitution may be limited only in terms of laws of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom, considering all relevant factors,

including:

- a. The nature of the right;
- b. The importance and purpose of the limitation;
- c. The nature and extent of the limitation;
- d. The relation between the limitation and its purpose; and
- e. Less restrictive means to achieve the purpose.

4.2 In terms of Section 36(2) of the Constitution, except as provided in Section 36(1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

4.3 When the limitation of rights is considered a two-stage analysis is required, namely:

- a. The first stage of the analysis is principally a matter of interpretation of the provisions of the law and the Bill of Rights to determine whether the provisions of the law infringe the Bill of Rights; and
- b. Secondly, whether there exists justification, bearing in mind the abovementioned criteria in Section 36(1), for the limitation.

4.4 The proposed 2021 Bill *inter alia* intends to:

- a. Limit and reduce existing and future firearm ownership;
- b. Specifically, and radically limiting privately owned firearms in all the categories of privately owned firearms, namely for self-defence, sport shooting, hunting, professional hunters, and collectors' purposes;⁹
- c. Repeal the present right to reload ammunition and possess reloading equipment; and
- d. Repeal the existing right of a private citizen to be licensed for self-defence purposes.¹⁰

4.5 Natshoot is, therefore, opposed to the 2021 Bill in its entirety. The limitation of the number of firearms and ammunition, the proposed repeal of the private collectors' category of firearms and ammunition owners and the prohibition of reloading equipment limits and seriously infringe the right to property as contained in Section 25 of the Constitution and the intended repeal of Sections 13 and 14, self-defence firearms, represents a serious threat to the fundamental rights to the right to life (Section 11 of the Constitution) and the right to be free from all forms of violence (Section 12(1)(c) of the Constitution).

⁹ Sections 16(b), 16(3A), 17(5), 18(12) and 19 of the 2021 Bill. Section 19 intends to summarily repeal the provisions of Sections 17 and 19 of the Firearms Act which deals with the rights of private collectors of firearms and firearms and ammunition by public collectors

¹⁰ Sections 13 and 14 are to be repealed by Section 15 of the 2021 Bill

- 4.6 The last chapter of this commentary contains the technical reasons why Natshoot objects to the 2021 Bill in its entirety. The technical criticism of the 2021 Bill exposes the irrationality of the majority of the proposed amendments and should be read together with the submission that the 2021 Bill cannot be a justifiable limitation of the mentioned fundamental rights.
- 4.7 *Natshoot is of the considered view that at present there is no justifiable need to amend the FCA as is proposed in the 2021 Bill.***
- 4.8 *The current FCA offers a firearms control system which has been in operation for over two decades, considering that in the past several amendments were made thereto and that Sections 24 and 28 of the FCA was subjected to the Constitutional Court's scrutiny.***
- 4.9 *Natshoot maintains that there are provisions in the FCA which should receive attention to increase the effectiveness of the administration of the FCA, but not along the radically limiting lines as proposed by the Secretariat.***
- 4.10 *Natshoot submits that if the Police is strengthened in the administration of the current FCA, there is absolutely no need to amend the FCA in the radical manner as proposed by the 2021 Bill.***
- 4.11 *The saying that "where there is no itch, then don't scratch" certainly applies to the current efforts to amend the FCA.***

**THE LIMITATION OF THE NUMBER OF FIREARMS A PERSON MAY
POSSESS IN TERMS OF THE 2021 BILL:**

- 4.12 The proposed amendments include the introduction of Section 2A and 2B, which respectively contains proposed "*Principles of the Act*" and "*Objects of the Act*".
- 4.13 Section 2A(a) proposes the inclusion of the following "*principle*", namely:
"2A *The underlying principles of this Act are to –*
(a) *Confirm firearm possession and use as not being a right but a privilege that is conditional on the overriding need to ensure public safety;.*"

- 4.14 The aforesaid principle has some resemblance to what has been said by the Constitutional Court, *per* Froneman J on 7 June 2018 in *Minister of Safety and Security v South African Hunters and Game Conservation Association* [2018] ZACC 14 (“the SA Hunters case”) in its introductory remarks, namely:¹¹
“Gun ownership is not a fundamental right under our Bill of Rights. It is a privilege regulated by law, under the Firearms Control Act¹ (Act).”
- 4.15 The obvious difference between what is proposed in Section 2A of the 2021 Bill and what has been stated by the Constitutional Court, is that the 2021 Bill reflects that “*firearm possession and use*” is a privilege and not a right, whilst the Constitutional Court pronounces that “*Gun ownership is not a fundamental right*”.
- 4.16 Although “*Gun ownership*” is not a fundamental right as is recognised in the Second Amendment of the Constitution of the United States of America, the right to property in South Africa is protected by Section 25 of the Constitution.¹²
- 4.17 Property, in the widest sense, includes ownership of movable assets such as firearms.¹³ In the case of *First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Services* 2002 4 SA 768 (CC) the Constitutional Court indicated that it is impossible to define property comprehensively for purposes of Section 25 and restricted itself to the statement that ownership of corporeal movables and of land is at the heart of the constitutional property concept.¹⁴
- 4.18 There is no doubt that firearms, ammunition, and reloading equipment are all corporeal movables, therefore is “property”, which is capable of ownership.
- 4.19 Ownership is one of the basic concepts of private law. Ownership has been defined as potentially the most extensive private right which a person can have with regard to a corporeal thing. Of all the private rights, ownership potentially

¹¹ At [1]

¹² “25. Property - (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application – (a) for a public purpose or in the public interest; and (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or approved by a court. (3) The amount of compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including – (a) the current use of the property; (b) the history of the acquisition and use of the property; (c) the market value of the property; (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and (e) the purpose of the expropriation. (4)..”

¹³ See the commentary of Currie and De Waal, **The Bill of Rights Handbook**, Fifth Edition, Juta, at 536 - 540

¹⁴ See AJ van der Walt, **Constitutional Property Law**, Third Edition, Juta, at p 93 and further

confers the most complete or comprehensive control over a thing.¹⁵ Ownership is not absolute and may be limited by public law. The 2021 Bill intends to comprehensively limit firearms ownership. The proposed limitation must comply with the constitutional requirements at contained in Section 36.

- 4.20 At present firearm ownership in South Africa is limited by the provisions of the FCA to the extent that a person must comply with the licencing requirements of the FCA.
- 4.21 However, no limitation is placed on the number of firearms which may be owned, and possessed by dedicated hunters, dedicated sports shooters, professional hunters, or private collectors, provided that they qualify to be issued with licences for the firearms (it is the function and prerogative of SAPS (CFR) to evaluate motivations and to award licences).
- 4.22 The renewal of licenses for an unlimited number of firearms is premised on the requirement that the Registrar of Firearms is persuaded that the applying firearm owner qualifies for a renewal in terms of the FCA.
- 4.23 As a general proposition, the limitations which are imposed on the ownership of firearms by the FCA are reasonable and promote the state's control over the possession and use of firearms, provided that the administration of the FCA is done in a fair and efficient manner by the Registrar of Firearms (being the National Commissioner of Police) and the Police, in general, themselves.
- 4.24 The limitations which are proposed in the 2021 Bill will not only limit future firearm ownership, but intends to terminate existing ownership firearms, ammunition, and reloading equipment. The 2021 Bill proposes a limit of 6 hunting firearms and 6 sport shooting firearms, repeals the right to collect firearms and criminalise the possession of reloading equipment.
- 4.25 The 2021 Bill provides that any existing firearm which a person is licenced to possess as a dedicated hunter or dedicated sports person may remain lawfully in possession of the owner until the expiry of the licence.¹⁶ However, if the owner exceeds the number of allowed firearms, then the excess firearm(s) must be reduced.¹⁷

¹⁵ **The Law of South Africa** ("LAWSA"), Butterworths, First Reissue, Volume 27, **THINGS** by **CG van der Merwe**, par 294 - 295

¹⁶ It is doubtful that the same will apply to collectors, because of the proposed repeal of that firearms and ammunition licencing category.

¹⁷ See Section 17 and 18 of the 2021 Bill

- 4.26 Section 30 of the 2021 Bill proposes that once a licence is terminated because of the expiry thereof, then the holder of the expired licence must dispose of the firearm:
- a. By surrendering the firearm to the police for destruction;
 - b. Through a dealer; or
 - c. By having the firearm deactivated.
- 4.27 Firearms have an intrinsic market value, which is determined by several factors such as quality, condition, brand name, calibre, availability, supply, and demand, etc.
- 4.28 Supply and demand would become a significant factor once the firearms market is inundated with firearms which may no longer be possessed by owners, who exceed the threshold number of allowed firearms. Logic dictates that an oversupply of firearms will devalue firearms to the extent that firearms would have to be sold to dealers at a significantly lower value than what the firearms are worth.
- 4.29 This may be attractive to dealers, but potentially the same number of firearms, which the 2021 Bill wants to reduce, will remain in circulation, albeit in the hands of dealers.
- 4.30 The option of surrendering firearms to the Police for destruction or deactivation would leave the firearm owners with diminished patrimony. In the case of surrender for destruction the owner would be left without any compensation for his firearm.
- 4.31 Deactivation would leave the firearm owner with an ornament having a fraction of the value of a fully functioning firearm.
- 4.32 Natshoot submits that any of the three options to dispose of an excess firearm would terminate or deprive, and not only limit property rights a firearm holds in what would become excess firearms.
- 4.33 The deprivation of property rights had been widely defined in the case of *First National Bank (supra)*. It was said that any: “...substantial interference or limitation that goes beyond the normal restrictions on property use or enjoyment found in an open and democratic society would amount to deprivation.”¹⁸

¹⁸ At par [32], per Yacoob J

- 4.34 If the 2021 Bill is approved by Parliament, then the property rights which the owners of excess firearms will be terminated.
- 4.35 The next inquiry is whether the deprivation is “*arbitrary*”.¹⁹ The arbitrariness inquiry entails twofold process, namely whether the deprivation is procedurally and substantially fair.
- 4.36 Save for the provision that would allow the remaining licenced period of an excess firearm to run out and then to dispose of the excess firearm in one of the aforesaid ways, there is no other procedure involved to make the deprivation of the Section 25 property rights neither fair nor arbitrary.
- 4.37 The substantive fairness of the deprivation of property would involve a rationality inquiry. It is abundantly clear that the method of reducing the number of firearms in terms of the 2021 Bill is absolute and offers no alternative means to motivate the continued possession of any excess firearms.
- 4.38 Herein below the justification which the Secretariat has offered for the rights limitation which is implicit to the 2021 Bill is criticised. The criticism exposes the arbitrariness with which the 2021 Bill intends to deprive firearms owners of their fundamental right to property.

COLLECTORS:

- 4.39 Section 17 of the FCA provides for the licensing of any firearm in a private collection of a firearm which is approved for collection by an approved collector’s association, based upon such historical, technological, scientific, educational, cultural, commemorative, investment, rarity, thematic or artistic value determined by the association.
- 4.40 Section 18 of the FCA provides for the licencing of ammunition in a private collection.
- 4.41 Section 19 of the 2021 Bill intends to summarily repeal Sections 17 and 18 without any rational reason and absolutely terminates the rights of existing private firearms and/or ammunition collectors.

¹⁹ Section 25(1) of the Constitution

- 4.42 The arbitrariness and ignorance of this intended violation of property rights becomes evident if regard is had to the purpose of firearms and ammunition collections.
- 4.43 Section 17(1)(b) of the Firearms Act discloses a symbiosis between the FCA and the National Heritage Resources Act, 25 1999. The provision makes it clear that firearms may be approved as collectable heritage items, which denotes that the historical value of firearms is recognised by national legislation. If the repeal of Sections 17 and 18 are allowed, then collections of great historical value are at risk of destruction.
- 4.44 The remaining characteristics in terms of which a firearm may qualify as collectable, namely technological, scientific, educational, cultural, commemorative, investment, rarity, thematic or artistic value are all strongly associated with proprietary rights which enjoy protection in terms of Section 25 of the Constitution.
- 4.45 Repealing Section 17 and 18 of the FCA without any procedural or substantive explanation of how the implied destruction of valuable collectables are to be managed, and financially justified, is irrational, arbitrary and beyond comprehension.
- 4.46 Nothing has been contained in the representation of the Secretariat to justify the repeal of Section 17 and 18.
- 4.47 Nothing in the 2021 Bill offers any alternative to the potential loss of the inherent historical and economical value of privately owned firearms and ammunition collections.
- 4.48 Although Section 19, which allows for public collectors to possess firearms and ammunition, will be left unaffected by the 2021 Bill, no provision is even made for the transfer of private collections to public collectors. Public collectors are also on record that they are loath to keep valuable collections of historically related firearms due to the stringent legal requirements of continuous renewal of licences they have to comply with.
- 4.49 No provision is made to financially compensate private collectors if they must surrender their firearms and ammunition.

4.50 The finality with which the 2021 Bill proposes to deprive firearms owners in this category of their property, are both procedurally and substantively unfair and on this ground alone should be deemed unconstitutional.

RELOADING AMMUNITION AND RELOADING EQUIPMENT:

- 4.51 It is proposed in Section 36 of the 2021 Bill that it would be a criminal offence if a person is found in possession of reloaded ammunition and/or reloading equipment.
- 4.52 Nowhere in the Secretariat's motivational documents has it been explained why reloading of ammunition and the possession of reloading equipment should be criminalised.
- 4.53 The proposed criminalisation poses a complete and absolute deprivation of the property rights which the owners of valuable reloading equipment hold.
- 4.54 Once the possession of reloading equipment is criminalised it follows that all such equipment would have to be destroyed without compensation.
- 4.55 The proposed criminalisation of the possession of reloading equipment is completely arbitrary and irrational and is therefore constitutionally objectionable.
- 4.56 In addition, the financial loss in income which will befall firearms dealers for who the sale of reloading equipment as well as components for reloading (i.e., casings, bullets, primers, die sets, presses, etc.), which makes up a substantial portion of their monthly income, will be economically devastating. How the Secretariat proposes to legally justify and explain the irrationality of declaring a significant part of a business which is legal today, illegal tomorrow, is beyond comprehension.

SELF-DEFENCE FIREARMS:

- 4.57 In terms of Section 2 of the FCA, the purpose of the FCA is to:
“(a) enhance the constitutional rights to life and bodily integrity;..”
- 4.58 Section 2(a) of the FCA is to be replaced by what is proposed in Section 2(a) of the 2021 Bill, which would read:
“(a) to ensure restricted access to firearms by civilians to ensure public order, to

secure and protect civilians, and comply with regional and international instruments on firearms control;”

- 4.59 The FCA, as it stands, recognises that firearms ownership, and the control over its possession should be considered and administered within the context of the “*constitutional rights to life and bodily integrity*”.
- 4.60 The omission from the 2021 Bill of the protection of the “*constitutional rights to life and bodily integrity*” is closely related to the repeal of Section 13 and 14 of the Firearms Control Act, which provides for the licensing of firearms which are intended for self-defence.
- 4.61 The introductory sentence in the Socio-Economic Assessment reads:
“*The proliferation of firearms creates a serious social problem in South Africa.*”
- 4.62 The policy behind the 2021 Bill is driven by a desire to reduce “*the proliferation of firearms*”. The Secretariat and the Cabinet seems to reason that if one of the categories for which firearms are licensed, namely self-defence firearms, is omitted from the qualifying purposes for lawful firearm possession, then this goal would be achieved.
- 4.63 Such reasoning is flawed for several reasons, of which the most disturbing is the threat it poses to the “*constitutional rights to life and bodily integrity*” as contained in Sections 11 and 12(1)(c) of the Constitution.
- 4.64 It is trite that every citizen has the right to defend him / herself against violence. In *S v Makwanyane and Another* 1995 (3) SA 391 (CC)²⁰ Chaskalson, then President of the Constitutional Court stated the following:
“*Self-defence is recognised by all legal systems. Where a choice has to be made between the lives of two or more people, the life of the innocent is given preference over the life of the aggressor. This is consistent with s 33(1). To deny the innocent person the right to act in self-defence would deny to that individual his or her right to life.*” (Emphasis added.)
- 4.65 The right to defend oneself against a life-threatening attack with deadly force is well-established, provided that the counterattack is justifiable.²¹

²⁰ At para [138] at 448H - 449A (Also see 1995 (2) SACR 1; 1995 (6) BCLR 665)

²¹ See for instance *Mugwena and another v Minister of Safety and Security* 2006 (4) SA 150 (SCA); *Minister of Law and Order v Milne* 1998 (1) SA 289 (W); *Maimela and another v Makhado Municipality and another* 2011 (6) SA 533 (SCA); *Ntamo and others v Minister of Safety and Security* 2001 (1) SA 830 (Tkh) *Minister of Safety and Security v Ntamo and others* 2003 (1) SA 547 (SCA)

- 4.66 Homicide in self-defence is justified if the victim had been unlawfully attacked and had reasonable grounds for thinking that he was in danger of death or serious injury, that the means he used were not excessive in relation to the danger, and that the means he used were the only or least dangerous whereby he could have avoided the danger.²²
- 4.67 The Secretariat itself motivated the 2021 Bill on *inter alia* the ground that we live in a violent society in which violent crimes are committed with firearms.
- 4.68 There is little doubt that a victim, who is armed with a firearm when attacked by an assailant, who is also armed with a firearm, is in a far more favourable position to fend off the life-threatening threat, as opposed to an unarmed victim.
- 4.69 Natshoot submits that South African citizens, who have the fundamental right to life and to be free of violence, and who has the common law right to defend themselves with deadly force against life threatening attacks, must have the choice to arm themselves against potentially lethal attacks. The most effective way to protect oneself or your loved ones against deadly threats, is by means of a firearm. In terms of the existing Sections 13 and 14 of the FCA, a South African citizen has the choice to arm him/herself with a firearm.
- 4.70 Motivating the reduction of the amount of lawfully possessed firearms would not solve the proliferation of violent crime in South Africa. The inverse is true insofar as the 2021 Bill proposes to prohibit the lawful possession of a firearm for self-defence purposes. Persons who have a genuine need to arm themselves with firearms against potential violent threats would be left exposed to the gun-toting criminal element of South Africa. It cannot possibly be expected of the Police to protect each victim that falls prey to the exploits of such criminals.
- 4.71 The 2021 Bill proposes to take away the right of a citizen to defend him/herself on completely irrational and unfounded grounds.
- 4.72 For present purposes Natshoot will limit its submissions to two grounds of irrationality, namely:
- a. The introduction of the requirement “*to provide a valid reason for possessing or using*” a firearm in Section 2B of the 2021 Bill makes the repeal of Sections 13 and 14 irrational;
 - b. If it remains foreseeable that sport shooting and/or hunting firearms may

²² *S v Makwanyane and Another* 1995 (3) SA 391 (CC) (also at 1995 (2) SACR 1; 1995 (6) BCLR 665) at para [138]

still be used for self-defence, then the repeal of Section 13 and 14 results in an absurdity; and

- c. The argument by those who support the repeal of Sections 13 and 14, namely that the Police will protect the public, fails dismally to offer a rational reason to repeal the sections. There can be no doubt that the police cannot protect the public adequately as is evident from their dismal record to curb and counter the violence and socio-economic upheavals which took place in KwaZulu-Natal and Gauteng between 9 and 18 July 2021.

4.73 In terms of the FCA the only type of license in terms of which an applicant must show a “*need*” is to motivate the possession of a self-defence firearm.²³ For as long as this was a requirement for a Section 13 or 14 self-defence firearm, applicants were able to persuade the Registrar that they have a need to possess firearms for self-defence. It is simply irrational to think that such a “*need*” would no longer exist.

4.74 It must be borne in mind that with each of the hundreds of thousands of firearm licences that were granted during the past decade, the Police agreed and admitted that the applicants had the “*need*” for self-defence and that they could not protect themselves in any other manner except by the possession of a firearm (and therefore satisfying the “*need*” requirement in Sections 13 and 14).

4.75 The absurdity behind the repeal of Sections 13 and 14 becomes apparent when it is considered that in terms of the 2021 Bill an applicant must show a “*valid reason*” to possess a hunting or sport shooting firearm. It is submitted that if a person intends to use a firearm for hunting or sport shooting purposes, then such an expressed legal intention would already constitute a “*valid reason*” to possess such a firearm.

4.76 Similarly, requiring a firearm for self-defence purposes to protect a person against a threat against his/her life and/or bodily integrity would always remain a “*valid reason*” to possess a firearm. This is particularly true if the state cannot effectively protect its citizens.

4.77 The proposed 2021 Bill provides that a person may possess firearms for the purpose of sport shooting and hunting. In terms of the amendment to Section 16 of the Firearms Act it is proposed that a sport shooter may possess a maximum of two handguns. It can be accepted that most Section 13 self-defence firearms are handguns. Does this mean that the intended repeal of Section 13 implies that no other firearm may be used for self-defence?

²³ Section 13(2)(a)

- 4.78 The 2021 Bill contains no provision which would prevent a person from using a sport shooting firearm or even a hunting rifle in self-defence. The absurdity of the repeal of Sections 13 and 14 is therefore evident, considering that a person may defend him/herself with a sport shooting handgun or hunting rifle, and yet, may not apply to be licensed to possess a firearm for self-defence.
- 4.79 The proposed repeal of Sections 13 and 14 of the Firearms Control Act threatens the fundamental right which citizens of South Africa have to life and to be protected against violence, should they be deprived of the choice to arm themselves on an equal basis as the dangerous criminal elements, who are rampant and seems to have an unlimited supply of illegal firearms, including firearms which were supposed to be safeguarded by the State.
- 4.80 With the proposed repeal of the right to apply to be licensed to possess a firearm for purposes of self-defence, the Cabinet proclaims to the public that its accepted policy is that innocent citizens may not arm and defend themselves with firearms against firearm yielding attackers.

**THE SECRETARIAT’S JUSTIFICATION OF THE 2021 BILL:
THE RATIONALE WHICH DRIVES THE POLICY TO REDUCE
THE NUMBER OF FIREARMS THROUGH THE 2021 BILL:**

- 4.81 When a constitutional challenge is made to a law in terms of Section 36 of the Constitution, the objector must show that there is a limitation of a fundamental right, whilst the promotor of the law is obliged to justify the limitation.
- 4.82 If the 2021 Bill is accepted in its proposed form by the Parliament, then Natshoot, and probably many other interested parties would challenge the constitutionality of the 2021 Bill on the basis that the 2021 Bill constitutes a serious limitation of several fundamental rights without justification. For present purposes, Natshoot herewith offers a limited exposition of some of the reasons why the limitations of rights would not pass constitutional muster.
- 4.83 In paragraph 1.1 of the Memorandum the Secretariat declares:
“The Firearms Committee, in its research found that gun violence was one of the main contributors to the cause of death in South Africa and that evidence showed that strengthening national gun laws, coupled with effective enforcement of gun laws, contributed to the reduction in gun deaths as well as

violent crime.”

- 4.84 A critical analysis of the 2021 Bill reveals that the way in which the Secretariat proposes to achieve the commendable goal, namely, to reduce violent crime, is by “*strengthening national gun laws*” through seriously limiting the rights of citizens to lawfully possess firearms in terms of the existing FCA.
- 4.85 This approach is confirmed by what is stated in paragraph 1.2 of the Memorandum, where the proposed 2021 Bill is motivated as follows: “*The amendments respond to the overarching policy principles of non-proliferation of firearms and the strengthening of the processes relating to applications for firearm and ammunition licences and the management of firearms and ammunition.*” (Emphasis added.)
- 4.86 Further critical consideration of the 2021 Bill and its motivational papers²⁴ leaves no doubt that the Secretariat maintains its position on the basis that legitimate privately owned firearms is the source of illegally owned firearms and that legally owned firearms should therefore be reduced.
- 4.87 This approach is evident from the proposed reduction of the number of firearms proposed in the 2021 Bill²⁵ and what is said in the Socio-Economic Assessment, namely that lawful firearm owners “*are targeted by criminals to rob them of their firearms*”.
- 4.88 It is submitted that this approach is fundamentally flawed.
- 4.89 Taking away firearms from persons who own and use them for lawful purposes such as self-defence, hunting, sport shooting and collecting because criminal elements steal or rob firearms from innocent persons, or by acquiring illegal firearms from the Police themselves, will not address the fundamental underlying problem.
- 4.90 Underlying reason for the proliferation of firearms must be attributed to an uncontrolled and poorly managed increase in serious crime. The rise of crime must be attributed to increased opportunity which is created by the inadequate and inefficient combat of crime by the Police. The Police, who is supposed to guard society against the criminal elements, suffers from inadequate resources, poor training, ineffective administration of most matters falling within their

²⁴ The Socio-Economic Assessment and the Memorandum

²⁵ No firearm will be licensed as self-defence weapon, sport shooters may only possess a maximum of 6 firearms and dedicated hunters, 6 firearms

responsibility and authority and having criminal elements within its midst.

- 4.91 If the Police fulfils its constitutional duty to combat crime, then there would not even be a debate about reducing or limiting privately owned firearms.
- 4.92 In terms of Section 205(3) of the Constitution the Police are required to: “...*prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and uphold and enforce the law.*” (Emphasis added.)
- 4.93 Recent case law, the media and admissions by the Minister and Commissioner of Police have exposed the reality that the Police is unable to fulfil the obligations that are imposed by Section 205(3).²⁶
- 4.94 To reason that the Police in South Africa can secure each citizen from the threats which are daily posed by an avalanche of criminals who are armed with firearms, is naïve. The protection by the Police as motivation for the repeal of Section 13 and 14 is therefore hopelessly unconvincing and should have been obvious to the policy makers who approved the publication of the 2021 Bill for comment.
- 4.95 The pillar on which the Secretariat’s approach to the reduction of illegal firearms is founded is ill-advised and/or uninformed in that it is not legitimately owned firearms which is the source of illegal firearms. It is criminal activity that is the source of illegal firearms. Reducing the number of privately owned firearms does not offer the solution to the fundamental problem, namely that crime in South Africa must be effectively challenged and reduced by the Police.
- 4.96 Accordingly, Natshoot appeals to the Secretariat to abandon its flawed attempt to initiate the amendment of the FCA as proposed in the 2021 Bill.

²⁶ See for instance *Van Eeden v Minister of Safety and Security (Women's Legal Centre Trust, as amicus curiae)* 2003 (1) SA 389 (SCA); *Rail Commuters Action Group and others v Transnet Ltd t/a Metrorail and others* 2005 (2) SA 359 (CC); *Phoebus Apollo Aviation CC v Minister of Safety and Security* 2003 (2) SA 34 (CC); *Saaiman and others v Minister of Safety and Security and another* 2003 (3) SA 496 (O); *Carmichele v Minister of Safety and Security and another (Centre for Applied Legal Studies Intervening)* 2001 (4) SA 938 (CC)

5. **CHAPTER 3: TECHNICAL COMMENTARY ON THE 2021 BILL:**

- 5.1 The Proposed Draft Amendments to FCA as Published in Government Gazette No. 44593 of 21 May 2021 (pages 149 to 156), merely contains unnumbered bullet pointed summaries of proposed amendments said to be contained in the Bill.
- 5.2 Yet on page 156 of the above-mentioned Gazette “...*interested persons and organisations...*” are being invited “... *to submit written comments on the draft Bill and Socio-Economic Impact Assessment System Report not later than 45 days from date of publication...*”.
- 5.3 It, however, remains a mystery as to how interested parties and the public should know;
- a. where to find the Bill containing the exact draft amendments to the FCA;
 - b. how to indicate on which unnumbered bullet point of the summaries of proposed changes said to be contained in the Bill, they will be commenting on;
 - c. how the amendments to which an unnumbered bullet pointed summary refers to, is exactly worded;
 - d. to which specific section or sub-section of the FCA the unnumbered bullet point they comment on, refers to, and;
 - e. that the documents they eventually comment on, are the correct documents referred to in the above-mentioned Gazette.
- 5.4 It is, thus, not clear how the Civilian Secretariat for Police, presumably acting on behalf of the Minister of Police, understood that this manner of announcing proposed amendments to the FCA could be seen to be officially and/or legally correct. We could not access any Government Gazette after 21 May 2021 in which the specifics and exact wording of the draft Bill had been officially published in.
- 5.5 The document containing the draft Bill, to which NHSA eventually got access to on 25 May 2021, has a CONFIDENTIAL watermark printed across the front page. For lack of any other official document containing the 2021 Bill, we comment on the content of that document and accept that it is the correct document containing the correct draft amendments to the FCA as proposed by the Civilian Secretariat for Police.

- 5.6 It is seriously disappointing that the Civilian Secretariat for Police could expect the public to take the presented SEIAS assessment, which is 5 years old, as proof that the prescribed procedures to publish the Bill has been followed. Reports of this nature are, as the referred to report itself states, only valid for 6 months.
- 5.7 Despite the time lapse, the SEIAS assessment 5-years ago already indicated a “lack of effective implementation of the FCA and other laws”. Note the comments are in respect of the implementation of the FCA and not to the content of the FCA
- 5.8 In addition, this report contains numerous blatant false statements; i.e., legal firearm owners do not have to undergo a competency assessment before applying for a licence and that privately owned firearms are the main cause of violent crime in our country. Both statements are devoid of any truth.

6. RETENTION OF ALL RIGHTS

- 6.1 The fact that the Natshoot below submits comments on the relevant sections in the draft FCA amendment Bill (2021), which falls within our field of expertise as accredited hunting and as accredited sport shooting association, must in no way be construed as that Natshoot acknowledges the incomplete procedures followed in announcing the proposed changes to the FCA to be correct. The perceived flaw in the legally prescribed procedures required to announce amendments to any Act, has been adequately dealt with in Chapters 1 and 2 of this document.
- 6.2 The claim by the Minister of Police in an official press release on 26 May 2021, namely that all stakeholders were consulted before publishing the bullet-pointed summaries of proposed amendments to the FCA in the Bill, is just not true. Persistent allegations remain indicating that only one civil society organisation, namely GunFree South Africa (GFSA), was ever consulted in compiling the proposed Bill.
- 6.3 The extensive research the Minister’s press statement of 26 May 2021 refers to, is not made available to the public to also scrutinise before commenting on the uncontextualized bullet points purportedly containing the proposed amendments to the FCA as are printed in the above-mentioned Gazette.

- 6.4 In addition, no proof of the stated support for the amendments contained in the Bill by several government departments are available (page 133 of Gazette No. 44593 of 21 May 2021). In this instance the specific mention of the Departments of Environmental Affairs, and of Tourism being in support of the Bill is difficult to understand as their involvement with matters concerning licensing of firearms is highly questionable, as is their intricate knowledge of the implications of the proposed amendments.
- 6.5 Suffice it to state that **NO** stakeholder from the firearm owning fraternity was consulted in drafting the proposed amendments (not one accredited association, no dealer, no gunsmith, or no-one in the security sector or of the training sector, or of the associations involved in the use of black powder firearms). The lack of these consultations with people who understand firearms use, and who are seriously preoccupied with legal firearms ownership and use, is clear to see in the large number of irrational and illogical proposed amendments (proposed by people who clearly portray their lack of grasp of or understanding of the subject matter they purport to write law on).
- 6.6 The fact that Natshoot does not comment on all proposed draft amendments to the FCA, should not be construed as that Natshoot supports those proposed amendments.
- 6.7 Regulations containing the practical implementation procedures of the proposed amendments to the FCA are not available. This makes commenting on any amendment to any section of the FCA, incomplete. NHSA reserves the right to comment on the changes to the Regulations as these will have to be compiled and published in Gazette before implementation.
- 6.8 The comments below follow the layout of the wording in the current FCA. The proposed amendments are quoted from page 8 of the draft Bill in the document which could be sourced (see 1.5 above).
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COMMENTS ON PROPOSED AMENDMENTS TO SPECIFIC SECTIONS OF THE FCA

7. PROPOSED AMENDMENTS TO DEFINITIONS

7.1 Occasional hunter and dedicated hunter

Proposed amendments

occasional hunter” means any person who, from time to time, participates in hunting activities ~~[but who is not a member of an accredited hunting association].~~

dedicated hunter” means a person who qualifies to engage in hunting and actively participates, in the prescribed manner in such hunting ~~[activities]~~ activity and who is a member of an accredited hunting association.

7.1.1 It is difficult to find the logic for the requirement that a dedicated hunter must first *qualify to engage in hunting* and must *participate in hunting in a prescribed manner* just because s/he, for very good reasons, holds more firearms than an occasional hunter.

7.1.2 If this proposed amendment to the definitions mean that a dedicated hunter hunts in a different manner than an occasional hunter, the premise is wrong, and proves the severe lack of knowledge of the composers of the Bill on the use of firearms for hunting.

7.1.3 The objects of the FCA are about control over possession of legally owned firearms and cannot even start to purport to be prescriptive in qualifications a hunter must first attain just because the dedicated hunter might hunt perceivably more frequently than the occasional hunter.

7.1.4 It is also not clear who will determine the “...*prescribed manner to engage in hunting...*” which will be required from dedicated hunters. There is no such requirement for the occasional hunter, which implies that occasional hunters can engage in hunting in any chosen manner.

7.1.5 Natshoot proposes that the definitions for occasional hunter and dedicated hunter remain as they are in the FCA without any changes as the existing is a far better distinction between people who hunt from time to time and people who hunt more frequently. Being prescriptive on the use of firearms in hunting is not the measure for owning firearms for hunting.

7.1.6 Once a person has been declared competent to own firearms it is the task of the CFR to issue or decline firearm licences for hunters according to the prescripts of the relevant sections of the FCA.

7.2 Occasional sports person and dedicated sports person

Proposed amendments:

occasional sports person” means any person who, from time to time, participates in sports-shooting [~~but who is not a member of an accredited sports-shooting organisation~~]

dedicated sports person” means a person who qualifies to engage in sports-shooting under this Act and actively participates, in the prescribed manner, in such sports-shooting and who is a member of an accredited sports-shooting organisation.

7.2.1 Once again it is difficult to find the logic for the requirement that a dedicated sports person must first *qualify to engage in sport shooting* and must *participate, in the prescribed manner* just because s/he, for very good reasons, holds more firearms than an occasional sports person.

7.2.2 The exact same questions re the definitions for occasional sports person and dedicated sports person can thus be asked as were above posed under the proposed definitions for occasional hunter and dedicated hunter.

7.2.3 Natshoot again propose that the definitions for occasional sports person and dedicated sports person remain as they are in the FCA without any changes as that is a far better distinction between people who participate in sport shooting for leisure and a hobby and those people who seriously and intensely participate in sport shooting in a competitive manner on provincial, national, or international level.

7.2.4 We also reiterate that once a person is declared competent to own sport shooting firearms it is the task of the CFR to issue or decline firearm licences for sports persons according to the prescripts of the FCA.

8. PREAMBLE OF FCA

8.1 Statements in current Preamble

8.1.1 It is not clear why the first three statements of the existing Preamble to the FCA had been deleted and replaced with the proposed new statements of the Preamble. It is understood that a Preamble would give the reasons for enacting

a specific piece of legislation. The current three statements, which have been, without explanation, unceremoniously deleted from the FCA, read as follows:

WHEREAS every person has the right to life and the right to security of the person, which includes, among other things, the right to be free from all forms of violence from either public or private sources;

AND WHEREAS the adequate protection of such rights is fundamental to the well-being and social and economic development of every person;

AND WHEREAS the increased availability and abuse of firearms and ammunition has contributed significantly to the high levels of violent crime in our society;

- 8.1.2 The deletion of the above statements is sinister in the extreme as it suggests that the Minister of Police and the composers of the Bill no longer see “...*right to life and the right to security of the person, which includes, among other things, the right to be free from all forms of violence from either public or private sources...*” as being important responsibilities placed at the door of government.
- 8.1.3 It is even more sinister that the majority of the proposed amendments in the draft Bill are aimed at making legal firearm ownership in this country as difficult as possible while not presenting one single action to be taken against illegal firearms used by criminals. At least the above-mentioned previous statements acknowledge the fact that the citizens of this country have a right to life, bodily integrity and to live in a safe environment. These are serious human rights now being destroyed in the new proposed Preamble to the FCA.
- 8.1.4 No research proving the reasons why these three statements should be deleted from the Preamble has been presented or has been presented on request of several the firearms owning stakeholders. The conclusion can only be that the research either does not exist, or because the relevant authorities do not want to make it available as it might be proven that their “say-so” has been wrongly presented.
- 8.1.5 The following facts confirm the irrational and unfounded deletion of the three above statements from the FCA Preamble:
- 8.1.5.1 According to the Small Arms Survey, an international watchdog monitoring firearms in 230 countries, there are approximately 5,3 million firearms in South Africa, of which 2,35 million are illegal and unlicensed (it is unclear how this

number of illegal firearms could be portrayed as being due to legal firearm owners);

- 8.1.5.2 In the above-mentioned outdated SEIAS report no statistical or scientific evidence is presented, which attributes the high level of violent crimes in this country to have been perpetrated with legally owned firearms;
- 8.1.5.3 There are approximately 58 murders per day in South Africa with only 1 police station per 50,000 citizens. To even start to suggest that the police (government) can adequately protect *the right to life and the right to security of the person* in respect of its citizens against ever increasing violence, is irrational in the extreme and undefendable in urban areas and townships, and even far less in rural areas;
- 8.1.5.4 According to the recent Institute for Security Studies Report (ISS 2020):
- a. nearly 52% of murders committed in South Africa (where causes could be established) relate to organised crime and inter-group violence;
 - b. murder and armed robbery in this country increased by 37% and 43% respectively between 2015 and 2020;
 - c. the SAPS' ability to solve murders has declined by 38%;
 - d. only 19% of murders are solved;
 - e. only 17% of aggravated robbery cases are solved;
 - f. the Police's crime intelligence capability has also declined due to political interference, corruption, and weak police leadership.

8.2 **Proposed Substitution for statements of existing Preamble**

WHEREAS in terms of the Constitution of the Republic of South Africa, 1996, the duty to maintain public order, to protect and secure everyone in the Republic lies with the State;

- 8.2.1 If the Minister of Police and the composers of the Bill are suggesting that government can protect and secure everyone in the country, they are wrong.
- 8.2.2 South African citizens surely must have the right to defend their right to life and the right to security of the person, as this country was in 2020 ranked as the fifth most dangerous country to live in out of 144 countries surveyed world-wide.
[\(https://businesstech.co.za/news/lifestyle/450267/south-africa-ranked-among-unsafest-countries-in-the-world-as-citizens-live-in-fear/\)](https://businesstech.co.za/news/lifestyle/450267/south-africa-ranked-among-unsafest-countries-in-the-world-as-citizens-live-in-fear/)
- 8.2.3 The Minister of Police nor the composers of the Bill can, against the existing track record, even start to imply that government can protect its citizens against

the perpetuated and ever-increasing violence the country has experienced over the past five years.

AND WHEREAS the State is a signatory to regional and international instruments on control of firearms, ammunition, and other related matters;

8.2.4 The international and regional instruments of control of firearms are focussed on military type weapons, and not on hunting and sport shooting firearms, or firearms used by security services in this country; all last mention being the categories of firearms the FCA refers to. It is a misnomer to cite these treaties as relevant to impose irrational amendments to the FCA and to even start to try to make them relevant to control of firearms used by legal firearms owners (legally owned private firearms are not instruments of war).

AND WHEREAS the State has an obligation to enact firearms legislation that complies with the applicable international and regional instruments;

8.2.5 This statement can only be true and relevant to the FCA if the firearms which are to be controlled through the FCA, pose a threat to regional safety and security, which they do not. In any other context this statement as part of the Preamble of the FCA is irrelevant and devoid of rationality regarding legal firearm ownership of the kinds of firearms controlled by the FCA.

AND WHEREAS the easy availability of firearms to civilians and their uncontrolled presence constitutes major threats to the security of persons and property, sustainable development and the stability of the State.

8.2.6 Any person suggesting that it is easy for civilians to obtain and legally own firearms in this country has no idea what the procedures entail to be able to own a firearm for legal use. Any person who wants to legally own a firearm must first be declared fit to own a firearm.

8.2.6.1 The process to be declared fit (competent) to legally own firearms is a tedious process of prescribed training before application can be submitted to be declared competent by the police to own a certain type of firearm;

8.2.6.2 After having been declared competent to own a type of firearm a person may apply for a licence to own that type of firearm (handgun, rifle, shotgun). Each application for a licence must be motivated for the legal use firearm and the licence is awarded by the CFR (police);

8.2.6.3 If one wants to own more than 4 firearms, or a semi-auto rifle or shotgun, or three handguns, for good reason, one must attain dedicated hunter or dedicated sports person status with an accredited hunting or sport shooting association, before one can apply for a licence for that those firearms - the licence is awarded by the CFR (police);

8.2.6.4 If one wants to collect firearms, one has to first join an accredited collector's association who will vet membership by evaluation and assign one a category for collection (A, B or C) depending on what types and kinds of firearms one has developed a theme for. Then only can a collector apply for a licence to have a specific firearm in his/her collection - the licence is awarded by the CFR (police).

8.2.7 Even trying to suggest that after having gone through the above-mentioned procedure to own a legal firearm, that legal private ownership of firearms is uncontrolled (presence), is nothing less than preposterous, irrational, and devoid of any logic.

8.2.8 One can continue to point out flaws in the reasoning of adopting the fourth statement as part of the proposed Preamble. It is, however, clear that the lack of responsible policing and the lack of responsible protection of SAPS firearms, are now being transposed as being the fault of legal private firearms owners. However, statistical fact shows that thousands of firearms make their way to criminals by way of theft from SAPS (more than 10,000 over the past five years including more than 10 million rounds of ammunition from SAPS safes and 13-stores.)

8.2.9 Arguing for the inclusion of the fourth statement as part of the Preamble to a sensible, realistic, and responsible FCA, borders the ludicrous.

9. SECTION 2

Purpose of Act

9.1 Proposed substitution of subsection 2(a)

Current text to be deleted reads:

(a) to enhance the constitutional rights to life and bodily integrity

Proposed new subsection 2(a)

(a) to ensure restricted access to firearms by civilians to ensure public order, to secure and protect civilians, and to comply with regional and international instruments on firearms control.

- 9.1.1 The only reason for the current subsection 2(a) to be deleted as part of the purpose of the Act, is if the Minister of Police and the composers of the draft Bill would want to deprive the citizenry of their rights to life and bodily integrity. There can be no other rational argument for the statement's deletion.
- 9.1.2 The function of protecting the citizenry now falls on government and the police with the new proposed insertion. Government and specifically the police have proven time after time that they cannot even start to fulfil these functions.
- 9.1.3 It is again pointed out that restricted access to the kinds of firearms being regulated and controlled through the FCA do not pose a security threat implied by international and regional instruments of firearms control, other than to give credence to the world-wide anti-firearms lobby. The sever control of access to firearms have nowhere in the world proven to be the answer in stopping violent crimes. Anybody who wants to make that statement must first present the facts. In the UK the serious political discussion to curtail violent crimes centres around prohibition of sharp pointed kitchen knives, as private ownership of firearms is severely restricted.

9.2 Proposed insertion of subsection 2A

2A. The underlying principles of this Act are to—

(a) confirm firearm possession and use as not being a right but a privilege that is conditional on the overriding need to ensure public safety; and

(b) improve public safety by—

(i) imposing strict controls on the possession and use of firearms;

(ii) promoting the safe and responsible storage and use of firearms; and

(iii) providing a framework for a holistic approach to the control of firearms.

- 9.2.1 Again, the assertion that the legal possession and use of firearms pose a threat to public safety (2A(a)) is unproven, and highly contestable. It is the use of illegal firearms which is proven to pose a threat to public safety. Lack of policing of last mentioned is the cause of public safety being threatened by the use of illegal firearms of which vast numbers emanate from police firearms lost or stolen or some sold or stolen from firearms and ammunition in SAPS 13 stores of the police themselves.

9.2.2 It is unclear as to what a “...*holistic approach to the control of firearms*...” really means and as to who will determine the circumference of the “whole” of the framework proposed. The formulation of the proposed insertion, 2A(b)(iii), clearly does not adhere to the requirements for clarity of legal formulations as contained in section 22 of the Consumer Protection Act, 2008 (Act 68 of 2008 [CPA]). The unqualified interpretation of this statement is open for abuse by implementers of the FCA to the detriment of the public whose safety should purportedly be protected by the sub-section’s inclusion.

9.3 **Proposed insertion of subsection 2B**

2B. The objects of this Act are to -

- (a) prohibit the possession and use of prohibited firearms and self-loading rifles and shotguns, except in special circumstances;*
- (b) establish an integrated licensing and registration scheme for all firearms;*
- (c) require each person who possesses or uses a firearm under the authority of a licence to provide a valid reason for possessing or using the firearm;*
- (d) provide strict requirements that must be satisfied in relation to licensing and renewal of licences in respect of firearms and the acquisition and supply of firearms; and*
- (e) ensure that firearms are stored and conveyed in a safe and secure manner.*

9.3.1 Natshoot retains the right to comment on the inclusion of these proposed additional objects of the FCA once the Regulations pertaining hereto, have been made available for public comment.

10. **SECTION 4**

Prohibited firearms

10.1 **Proposed amendments to subsection 4(3)(a)**

(aA): The Minister may, by notice in the Gazette, declare any specific type of ammunition to be prohibited ammunition, which may not be possessed in terms of this Act if it is-

- (i) In the interest of public safety;*
- (ii) Desirable for maintenance of law and order; or*
- (iii) To ensure the safety of law enforcement officials.*

10.1.1 It is our contention that only inclusion of paragraph (aA)(iii) of the above-mentioned three subparagraphs can be rationally justified.

10.1.2 It is unclear as to how prohibiting a certain type of ammunition can contribute to public safety, neither how it could enhance the maintenance of law and order.

11. SECTION 6

Competency certificates, licences, permits and authorisations

11.1 Proposed insertion of subsection 6(1A)

(1A) Despite subsection (1)(b) (determines a person must be 21 years of age before s/he can apply for any competency), the Registrar may issue a competency certificate, licence, permit, or authorisation contemplated in this Act to an applicant who is between the age of 18 years and 21 years if there are compelling reasons as contemplated in section 9(5)(b).

11.1.1 There are numerous instances where young people under the age of 18 actively and successfully participate in provincial, national, and international sport shooting competitions. It needs to be acknowledged that these younger people cannot be denied the right to participate in the sport they choose. Persons younger than 13 years successfully and actively participate in all other sports including motorbike and go-cart races on a provincial, national, and international level.

11.1.2 Restricting an individual who at the age of 18 years may obtain a professional hunters' licence, directly restricts such individual from choosing a career, and from making a living for him or herself as such a person may not own the most basic tool for his trade, namely a firearm. This just further confirms the irrationality of this proposed amendment.

11.1.3 Persons under the age of 18, therefore, require to be declared competent to own a firearm as parents in whose name firearms must now be licenced for the sake of their child's participation in provincial, national, and international competitions, cannot always accompany them to participate in these competitions away from their homes. The current subsection 9(5)(b) describes the situations in which persons younger than 21 can apply to be declared competent to own firearms, adequately enough so that no further limitation should be placed on sport shooters who win medals in our country's name.

11.2 Proposed insertion of subsection 6(1B)

(1B) If a person contemplated in subsection (1A) is an applicant for a firearm licence, permit or authorisation, such applicant must have been constantly supervised for a period of 12 months on the use and handling of a firearm by a person who is over the age of 21 years and who has held a licence for a similar type of firearm for a period of at least three years.

11.2.1 It is impractical to expect a supervising person to travel with a person who participates in competition shooting all over the country (see 11.1.2). The composers of the Bill clearly do not understand how hunting and or sport

shooting firearms are used, and the practical arrangements required to use same if the user cannot be licensed for possession of a firearm.

11.3 Proposed insertion of subsection 6(1C)

(1C) The applicant contemplated in subsection (1A) must furnish an affidavit from the supervisor contemplated in subsection (1B) confirming that the applicant has been provided with the supervision on the use and handling of a firearm.

11.3.1 The same comment as under the proposed insertion of subsection (1B) is relevant here.

11.4 Proposed insertion of subsection 6(1D)

(1D) Any person who provides false information in respect of the supervision contemplated in subsection (1B) and (1C) is guilty of an offence.

11.4.1 We reiterate that the requirements to be declared competent to own a firearm under the age of 21 is adequately prescribed under the existing subsection 9(5)(b).

12. SECTION 8

Accreditation

12.1 Proposed insertion of subsection 8(7)

(7) The chairperson or an authorised office bearer of an association or organisation accredited in terms of this Act must, with regard to an application by its member for a licence to possess a firearm for-

(a) dedicated sports shooting;

(b) dedicated hunting; or

(c) professional hunting.

in the prescribed manner, verify the application made by such member of that association regarding the use, purpose and category of the firearm applied for, including the motivation for the application or any other part of the application.

12.1.1 Why this requirement is stipulated for only dedicated hunters, sports persons and professional hunters, and not for all applications is not clear. The implied difference between the firearm a dedicated hunter uses and the firearm an occasional hunter uses, is not understood. The requirement is irrational and illogical.

- 12.1.2 This is also a blatant and seriously unreasonable delegation of CFR functions and responsibilities to accredited associations. Accredited associations have no legal authority to evaluate such personal motivation, or comment on any other part of its member's licence application.
- 12.1.3 The inclusion of the subsection places unreasonable liability on accredited associations if their members should for whatever reason transgress any law in respect of any use of a firearm after the accredited association would have complied with the proposed new stipulations of subsection 7(8).
- 12.1.4 The additional responsibilities were also never part of the original requirements to apply for accreditation with SAPS as a relevant association, and cannot in 2021, 17 years after the FCA came into operation in 2004, now be included as prerequisites for accredited associations to remain accredited.
- 12.1.5 The only task included in the proposed inclusion of subsection 7(8), which accredited associations already do, without it being part of the FCA or its Regulations, is the issue of a certificate (called an endorsement) stating that the type of firearm and the calibre of the firearm complies with requirements to hunt or to participate in sport shooting.
- 12.1.6 Initially CFR has arbitrarily outside the law, for the past 4 years required applicants to submit a so-called endorsement when applying for a licence for a semi-auto rifle or shotgun. This outside the law requirement was later arbitrarily also transferred to licence applications for all new firearm licences (most provinces require endorsements for renewal applications too).
- 12.1.7 The arbitrary outside the law requirement for endorsements accompanying applications have reached a stage where numerous of our members have had licence applications declined because they had not also submitted an endorsement with their application (a function one would expect the DFO to have informed the member about).
- 12.1.8 Despite the arbitrary inclusion of subsection 8(7) the composers of the Bill do not state who executes this function in respect of occasional hunters and sports persons (licensed firearm owners who are not required to belong to an accredited association). The absolute vast majority of firearm owners in this country are, by the mere number of firearms they own, defined as occasional hunters and sports persons (see definitions for occasional hunter, paragraph 3.1 and for occasional sports person, paragraph 3.2 above).

12.1.9 It thus seems as if there is a clear and open unjustifiable bias against dedicated hunters, sports persons, and professional hunters re legal firearm ownership.

12.2 Proposed insertion of subsection 8(8)

(8) The Registrar must take into account the verification by the accredited association or organisation when considering the application referred to in subsection (7), by a member of that association.

12.2.1 There is no clarity as to what Regulations will describe how and to what extent the Registrar must take the verification of the accredited association into account when evaluating an application for a firearm licence. If the Regulations do not describe in detail the responsibility now placed on accredited associations and how the Registrar is to take account thereof, this becomes just another paper with no authority, which has to be attached to an application.

12.2.2 If subsection 8(7) is not included in the FCA this proposed subsection has no relevance.

12.3 Proposed insertion of subsection 8(9)

(9) The Registrar may independently verify any information supplied by the chairperson or an authorised office bearer of the accredited association or organisation.

12.3.1 If subsection 8(7) is not included in the FCA this proposed subsection has no relevance.

12.4 Proposed insertion of subsection 8(10)

(10) The Registrar may refuse the application on good cause in which case the Registrar must notify the applicant in writing of such refusal and include reasons for the refusal, within 30 days of the said refusal.

12.4.1 If the Regulations do not include sanction against the Registrar if he does not adhere to the 30-day requirement, this inclusion has no logic attached to it.

12.4.2 If subsection 8(7) is not included in the FCA this proposed subsection has no relevance.

13. SECTION 9
Application for Competency certificate

13.1 Proposed amendment of subsection 9(1)

(1) An application for a competency certificate to possess a firearm, to possess a muzzle loading firearm, to trade in firearms and ammunition, to manufacture firearms or ammunition, to be a dedicated hunter, to be a dedicated sports person, to be a professional hunter or to carry on business as a gunsmith, must be delivered to the Designated Firearms Officer responsible for the area in which the applicant ordinarily resides or in which the applicant's business is or ~~[will]~~ shall be situated, as the case may be.

13.1.1 The inclusion of the text reading, “...*to be a dedicated hunter, to be a dedicated sports person, to be a professional hunter...*” is irrational. Section 9 of the FCA already adequately prescribes the prerequisites for a person to comply with before s/he can be declared fit to apply for a licence to own (possess) a firearm (be declared competent). If a person has already been declared fit to own firearms (handguns, rifles, shotguns, and self-loading rifles), there can be no additional requirement to own (possess) firearms as a dedicated hunter, or sports person, or professional hunter. The person has already been declared fit to own firearms. There can be no rational to requiring a dedicated hunter or dedicated sports person to be declared “more” fit to legally own and use firearms.

13.1.2 In respect of professional hunters, the requirements to be declared a professional hunter and to operate as such is already an onerous process as these people have to complete an intensive professional hunters training course and thereafter have to comply with numerous national and provincial regulations in order to legally conduct their business. This is a procedure which is much more difficult to complete and comply with than merely being declared fit to own firearms. The inclusion of a competency for professional hunters is highly irrational. Adequate and specialised firearms are the basis for a professional hunter to be able to conduct a competing business in hunting. It remains uncertain why a professional hunter must be more competent to own and use firearms than any occasional hunter. Competency is about having been found fit to own firearms legally and being declared as such by SAPS; nothing more.

13.2 **Proposed amendment of subsection 9(4)**

by the deletion of subsection (4)

13.2.1 The current subsection 9(4) reads as follows:

“(4) The disqualification contemplated in subsection (2) (p) ends upon the expiry of a period of five years calculated from the date on which the person became or was declared unfit, or the expiry of the period for which the declaration is valid, whichever occurs first”.

(Subsection 9(2) reads as follows: “(2) Where a person has not previously obtained a competency certificate, a competency certificate may only be issued to such person if he or she- has not become or been declared unfit to possess a firearm in terms of this Act or the previous Act).

13.2.2 By deleting subsection 9(4) a person who has been found unfit to possess firearms, for whatever minute transgression, in a section 102 hearing has no way of owning firearms again. Such a situation just cannot have any legal justification and stands to be questioned regarding the fairness of such a situation in law.

13.2.3 Allowing DFOs to conduct section 102 hearings of which the results could be as now imposed by deleting subsection 9(4), will lead to an increase in court cases against SAPS as DFOs are proven not to all be able to manage these kinds of hearings objectively.

13.2.4 If subsection 9(4) is to be deleted with all negatives attached thereto, all procedures pertaining section 102 hearings should be referred to a court and not left to DFOs to decide.

13.3 **Proposed amendment of subsection 9(5)**

*(5) (a) Despite subsection (2)(a) [subsection 2(a) stipulates a person must be 21 years of age to apply for a competency], the Registrar may allow a person **[under]** between the age of 18 years and 21 years to apply for a competency certificate if there are compelling reasons which require the person to obtain a competency certificate or licence to possess a firearm.*

*(5) (b) Compelling reasons contemplated in paragraph (a) may include the fact that the applicant conducts a business, is gainfully employed, a dedicated hunter **[,]** or a dedicated sports person **[or a private collector]**.*

13.3.1 There is no rational or legal justification to limit special application for a competency to the age of 18. Adequate argument against this arbitrary change has been made in paragraph 7 above.

13.3.2 Excluding private collector in subsection 9(5)(b) will be dealt with under the proposed exclusion of section 17 from the FCA (paragraph 17 below).

13.4 **Proposed amendment of subsection 9(9)**

(9) A competency certificate may not be issued to any person who had been—

(a) convicted of any offence that has an element of violence; or

(b) sentenced to imprisonment without the option of a fine.

13.4.1 Including the proposed subsection 9(9)(b) into the FCA means that any person who has been imprisoned without the option for a fine, for whatever reason not related to firearms or violence, will for ever be excluded from applying for a competency.

13.4.2 **Placing such limitation on legal firearms** ownership is irrational and illogical.

14. **SECTION 10**

Competency certificate

14.1 **Proposed additions to subsection 10(c)** (underlined text)

(1) A competency certificate must specify-

(a) whether it relates to competency to-

(i) possess a firearm;

(ii) trade in firearms;

(iii) manufacture firearms;

(iv) conduct business as a gunsmith;

(v) dedicated sports person;

(vi) dedicated hunter; or

(vii) professional hunter.

(b) all the relevant tests successfully completed by the holder.

(c) (i) the period of its validity; and

(ii) other information as may be prescribed.

*(2) **[A]** Subject to Items 1B and 1G of Schedule 1, a competency certificate contemplated in **[subsection 1(a)(i), (ii), (iii) and (iv),]** this section remains valid for **[the same period of validity as the period determined in this Act in respect of the licence to which the competency certificate relates]** a period of 5 years from the date of issue thereof, unless the competency certificate is terminated or renewed in accordance with the provisions of this Act."; and*

~~(3) A competency certificate relating to a muzzle loading firearm lapses after ten years from its date of issue, unless the competency certificate is terminated or renewed in accordance with the provisions of this Act.~~

- 14.1.1 The inclusion of the irrational requirement to attain competency for dedicated sports person, dedicated hunter, and professional hunter, has been dealt with in paragraph 8.2 above.
- 14.1.2 Similarly the changing of the validity of competencies to a 5-year period will increase the already overburdened workload of the Registrar and the SAPS's forensic laboratories. Prescripts in the FCA cannot just be made to be relevant to the public. It must also take into account the reality of the reasonable ability of the administration to successfully complete their tasks implied by proposed changes (the Registrar is as it is, already seriously struggling to fulfil its duties within the legally prescribed time frames).

15. SECTION 11

Separate licence for each firearm

15.1 Proposed insertion of subsection 11A

- (1) *The Registrar may not issue a licence that authorises the possession of a firearm unless the Registrar is satisfied that the applicant has a valid reason for possessing the firearm in line with the provisions of this Act.*
- (2) *The Registrar may only issue a licence in terms of this Act if the applicant—*
- (a) *states that he or she intends to possess the firearm for any one or more of the reasons set out in this Chapter; and*
- (b) *provides written proof and evidence to the satisfaction of the Registrar in relation to the requirements set out in this Chapter and as prescribed for acquiring a firearm licence under this Act.*

- 15.1.1 No sensible comment can be made on these inclusions to the FCA without having read the Regulations pertaining hereto.

16. SECTION 13

Deletion of - Licence to possess firearm for self-defence

- 16.1 The deletion of this section of the FCA is irrational to the extreme in a crime ridden country like South Africa.

- 16.2 Comprehensive legal argument against the deletion of section 13 from the FCA has been made in paragraphs 4.57 to 4.80 above.
- 16.3 Suffice it to say that SAPS have been reported to have lost more than 26,000 firearms over the past 12 years (police firearms and firearms in their custody). Therefore, to try and claim that legal firearms in the hands of citizens is the source for illegal firearms, is irrational and just not true.
- 16.4 Add to this the fact that more than 10 million rounds of ammunition have been stolen from the police in the past 5 years. To then continue to allege that the firearms in the hands of lawful firearms owners are the “pool” of firearms getting in the hands of criminals (which is the persistent GFSA argument to which the Minister has apparently attached to) is just not backed up by fact (see paragraph 4.5 (a) above).
- 16.5 In addition, it is submitted that the looting and general criminality which occurred during July 2021 in KwaZulu-Natal and Gauteng and resulted in damages estimated at between R30 and R100 Billion and the loss of more than 300 lives, is indicative that the Police (even if assisted by the defence force) cannot prevent citizens from death, serious assault or loss of property and that there is no justification whatsoever to argue that citizens should not possess firearms for self-defence.

17. SECTION 14

Deletion of - Licence to possess restricted firearm for self-defence

- 17.1 The same comments made under 16 above is relevant to the proposed deletion of this section from the FCA. Nothing has changed on farms in outlying rural areas to suggest that it is safer to live there than before the composition of the Bill.
- 17.2 Once again the composers of the Bill are proving that they consider the lives of the normal citizenry to be not important at all in a country where the normal reaction time of the police to a violent crime scene is 19 minutes in urban areas. In rural areas this response time is multiplied by 4. To try and suggest that the police can adequately protect the lives of the ordinary citizenry in the violent crime ridden rural areas of this country, denies the fact that the violent crime is increasing due to a lack of responsible policing.

17.3 Comprehensive legal argument against the deletion of section 14 from the FCA has been made in paragraphs 4.57 to 4.80 above.

18. SECTION 15

Licence to possess firearm for occasional hunting or sports-shooting

18.1 It has been a flaw in the FCA since its inception to issue section 15 licences in order to control occasional hunting and sport shooting firearms under the same section. The use of firearms for hunting and the use of firearms for sport shooting are two technically specialised fields and firearms are set-up for either hunting or either for sport shooting (despite two firearms having the same calibre and make). In short, hunting firearms are not sport shooting firearms and *vice versa*. Neither can shotguns used for hunting be used for high level shotgun competitions under sport shooting.

18.2 It is suggested that section 15 be divided into Section 15A for licensing and control of occasionally used sport shooting firearms and section 15B for licensing and control of occasionally used hunting firearms; and if limitations are to be imposed these limitations be made relevant to either sport shooting or to hunting firearms respectively.

18.3 **The proposed addition of subsection 15(2A)**

2A The firearm licence for occasional hunting or occasional sport-shooting purposes may only be issued if the applicant—

- (a) is the owner or lawful occupier of property where occasional hunting or occasional sport-shooting shall take place; or*
- (b) produces documentary proof of permission by the owner or lawful occupier of property referred to in paragraph (a), to engage in occasional hunting or occasional sport-shooting on the said property.*

18.3.1 The inclusion of this subsection is seriously irrational and devoid of cognisance of practical realities.

18.3.2 Inclusion of this subsection would mean that any sport shooter will have to get documentation from a shooting range that they may shoot there, while shooting ranges are businesses and open to the public to use as the public chooses. The requirement that shooting ranges will then be required to give permission for sport shooters to shoot at their business is unfounded and a totally irrational proposed prerequisite before the Registrar may issue a section 15 licence. It is

just as ridiculous as to expect one to first get permission to do one's shopping at Checkers.

- 18.3.3 Hunting is conducted on any of the more than 15,000 game farms/ ranches in this country. There are monthly literally hundreds of advertisements in hunting magazines and on social media platforms advertising hunting opportunities in this country. It is the democratic right of the hunter to hunt where the animals s/he wants to hunt are available, and where the price for the hunt suits his/her budget. To now require an occasional hunter to present written proof that s/he may hunt on a specific property before a section 15 licence can be awarded is denying the hunter the democratic right to choose where s/he wants to hunt and spend his/her money.
- 18.3.4 Detailed research of the University of North-West has shown that national hunters already contribute more than R12 Billion to the fiscus annually if only their direct personal expenditure to conduct a hunt is calculated. Monies being spent on down the line economic activities emanating from these national hunters' excursions, reach staggering figures quoted at more than R30 billion per annum.
- 18.3.5 Even proposing such an amendment makes a mockery of rationality, which should be attached to evaluating applications for private firearms ownership under section 15.

19. SECTION 16

Licence to possess firearm for dedicated hunting and dedicated sports-shooting.

- 19.1 As has been suggested under 18.1 above, the same flaw in the FCA has been present since its inception to try and control section 16 licences for dedicated hunting and dedicated sport shooting firearms under the same section. As has been indicated (18.1) the use of firearms is a technically specialised field and firearms are set-up for either hunting or either for sport shooting (despite two firearms having the same calibre and make).
- 19.2 It is suggested that section 16 be divided into Section 16A for licensing and control of dedicated sport shooting firearms and section 16B for licensing and control of dedicated hunting firearms; and if limitations are to be imposed these

limitations be made relevant to either sport shooting or to hunting firearms respectively.

19.3 **The proposed additions to subsection 16(2)**

(2) The Registrar may issue a licence in terms of this section to any natural person who is a dedicated hunter or dedicated sports person if the application is accompanied by a sworn statement or solemn declaration from the chairperson of an accredited hunting association or sports-shooting organisation, or someone delegated in writing by him or her, stating that the applicant—

(a) is a registered member of that association;

(b) has actively participated in hunting or shooting events of the association; and

(c) has, during the preceding period of 24 months, complied with requirements of being awarded with a dedicated hunter or dedicated sports person status as prescribed.

19.3.1 It is suggested that the wording of the proposed subsection 16(2)(a) be changed to read *has actively participated in hunting or shooting events recognised by the association*.

19.3.2 Accredited hunting associations do not have hunting events as their members hunt where they want to (see 18.3.3 above).

19.3.3 Imposing limitations on dedicated sports persons that they may only participate in sport shooting events presented by their accredited association, is irrational and devoid of any practical reality. Such requirement also imposes impractical and unfair limitations of sport shooters in as far as their right to choose to also participate in sport shooting events presented by other sport shooting bodies (other than those presented by their accredited association).

19.4 **Proposed additions to subsection 16(5)**

(5) A person may not hold more than six licences in terms of this section.

19.4.1 The Minister of Police is on record as stating that he is opinion that one needs only one rifle to conduct hunting. It seems this position is now enhanced by the composers of the Bill to be the truth. However, nothing can be further from the truth than that statement as one cannot hunt buffalo ethically and safely with .243 Win calibre rifle. It remains unclear as to how the arbitrary number of 6 firearms were calculated, and on which fact-based research this limitation has been based.

- 19.4.2 As has been indicated in 18.1 and 19.1 above, firearms used for hunting and for sport shooting are technically vastly different for the set-up the owner chooses to use firearm for. To impose an arbitrarily chosen number of 6 firearms to be held under section 16 for both sport shooting and hunting is impractical as there is not one calibre rifle suited for all hunting as there is no one calibre of rifle suited for all sport shooting disciplines sport shooters participate in.
- 19.4.3 The ethics of hunting determines a one-shot-kill which translates into the fact that one cannot hunt heavy-bodied game species with under-sized calibres. On the other hand, large calibre rifles are not used on small to medium sized game due to the meat loss experienced when using large calibre rifles for their hunting. Rifles are specifically set-up for hunting specific sized game or for participation in specific sport shooting exercises which takes place over varying distances and under different field conditions (a rifle which is set-up to shoot gongs over distances further than 1,200m is a vastly different instrument than a .22LR rifle used for practice purposes at 50m). Rifles, therefore, cannot be interchanged between sport shooting and hunting without having to redo any load development done with a rifle for a specific purpose, or to replace expensive telescopic sights.
- 19.4.4 It is suggested that the current limitation of firearms to be held under section 16 be retained. The awarding of licences is the responsibility of the Registrar if the application is accompanied by motivation for the use of a specific firearm. There can be no rational or reasonable legal argument why an arbitrary limit of 6 firearms should be imposed by this section of the FCA.

19.5 **Proposed additions of subsection 16(6)**

(6) A person issued with a licence in terms of this section may not hold more than two licences each in respect of a—

(a) handgun;

(b) semi-automatic rifle; or

(c) pump action or semi-automatic shotgun, for dedicated hunting or a dedicated sports shooting.

- 19.5.1 The limitation of 2 handguns for serious dedicated handgun sport shooters is irrational and unfounded. The limitation also does not acknowledge the international standards in handgun competitions, which requires different types of pistols or revolvers for different exercises and different disciplines, which always require more than two handguns to competitively compete in.

19.5.2 The Minister of Police cannot deny the citizenry the right to choose the sport they want to participate in. Placing a limitation on sport shooters with Protea colours to participate competitively on internationally level immediately disqualifies South African Protea colour holders. Therefore, the imposed requirement is irrational and unfounded.

19.5.3 Once again; it is the function of the Registrar to award section 16 licences against motivated applications. That function must be executed with responsibility within an environment of knowledgeable evaluators of firearm licence applications and the different disciplines these firearms are used for.

19.6 **Proposed addition of subsection 16(7)**

(7) A semi-automatic rifle or a semi-automatic shotgun may only be registered in terms of this section to a person who has maintained a dedicated status as a hunter or sports-shooter for a period of at least two years and continues to maintain such a dedicated status.

19.6.1 How the composers of the Bill perceive this imposition as being rational defies any logic. There can be no rational for first having to be a dedicated sports person for two years before a sport shooter may apply for a licence for a semi-auto rifle or shotgun if s/he is declared competent to own such a firearm.

19.6.2 These are firearms a sport shooter needs to participate on a local, provincial, national, or international competitive level. Three-gun competitions disciplines, as one example, require that a person use a semi-automatic pistol, a semi-automatic shotgun, and semi-automatic rifle for each of the components of the competition. Once again it is not for government to decide when a sport a person may start participating in his/her chosen sport. The Registrar has the authority to award licences for these firearms on good reasons shown by the applicant as are clearly and adequately stipulated in the current FCA.

19.7 **Proposed addition of subsection 16(8)**

(8) Any application for a licence under this section must be accompanied by a written motivation containing at least the following information—

(a) the needs of the dedicated hunter or dedicated sports shooter;

(b) the type of firearm required;

(c) the shooting disciplines that the applicant is involved in; and

(d) such other information as may be prescribed.

19.7.1 The written motivation referred to in subsection 16(8) describes “**where the firearm will be used and how the firearm will be used**”. In any other instance the word “needs” has been defined otherwise evaluation of an application can be

arbitrarily decline just because the evaluator(s) of the application does not understand the environment the firearm will be used in.

19.7.2 We also suggest that the wording of the proposed inclusion of subsection 16(8)(c) be changed to read “***in the case of an application for a sport shooting firearm, the shooting discipline the applicant is or will be involved in***”. One cannot participate in a shooting sport if one does not have a relevant firearm. One thus cannot show in which shooting disciplines one is involved in because one cannot participate therein for lack of an appropriate firearm.

19.8 **Proposed addition of subsection 16(9)**

(9) The motivation contemplated in subsection (8) must be supported by the chairperson or authorised office bearer of the relevant hunting association or sports-shooting organisation, as the case may be.

19.8.1 There is no rational justification to include this prerequisite in respect of applications for section 16 licences, as there is no such requirement for a section 15 licence. A person who is a dedicated hunter or sports person has already complied with a number of requirements an occasional hunter or sports person is not required to comply with. This is harsh discrimination against a person which has reason to possess more than four firearms and who has already gone the extra mile to comply with requirements to own more than 4 firearms.

19.8.2 The Registrar has the legal authority to award or decline section 16 licence applications. If the chairman or his/her delegate supports the applicant’s motivation, that function must at least be acknowledged to carry weight other than it just being another piece of paper an applicant must hand in with his application. Practice has shown that current outside the law required endorsements of applications are just that; an extra piece of paper to be attached to a motivation, which carries no weight. In any event, the Registrar has constantly declined to make policy containing the requirements to be included in a motivation, available to applicants. The chairman of an association’s support of a motivation will thus clearly be just another paper which if not attached gives reason to decline an application.

19.8.3 Apart from the statement in 19.8.2, if the chairman or his delegate supports any motivation of a member of the association, and anything goes wrong with the use of the specific firearm, the chairman or his delegate can be held liable.

Awarding of licences is the function of SAPS and they must bear the responsibility when awarding same.

20. SECTION 16A

Licence to possess firearm for professional hunting.

20.1 Proposed amendment of subsection 16A(3)

(3) A firearm in respect of which a licence has been issued in terms of this section may be used by the professional hunter for his or her private use and professional hunting purposes where it is safe to use the firearm [and for a lawful purpose].

20.1.1 It is not quite clear why "...and for a lawful purpose..." is deleted in this subsection. Deleting this text surely does not mean that professional hunters may use section 16A licensed firearms in an unlawful manner.

20.2 Proposed addition of subsections 16A(5) and 16A(6)

(5) A person may not hold more than eight licences in terms of this section."

(6) A person who is a professional hunter may not be issued with more than two licences each in respect of a—

(a) handgun;

(b) semi-automatic rifle; or pump action or semi-automatic shotgun.

20.2.1 There can be no rational justification to limit a professional hunter, who makes a living through guiding of hunting clients, to eight firearms in the combinations proposed. This limitation clearly indicates the lack of understanding and knowledge of the Professional Hunting Profession and the diversity thereof. It also places a reasoned limitation on a professional hunter to sensibly do the business of hunting with clients, which include hunting from gamebirds to waterfowl, to small game, to medium sized game, to large game, to dangerous game. Each hunt for each of these game animals requires different calibres of rifles and different gauges or types of shotguns. How the composers of the Bill can start to think that they have the right to dictate to a hunting business owner how s/he should conduct his/her business by curtailing the number of tools s/he may use to conduct business and make a living is highly irrational. It is like making law that a plumber may only have two sets of pliers, or a carpenter may only have two saws.

20.2.2 It is suggested that the current limitation of firearms to be held under section 16A be retained. The awarding of licences is the responsibility of the Registrar if the application is accompanied by a motivation for the use of a specific firearm.

There can be no rational and reasonable legal argument why an arbitrary limit of 8 firearms should be imposed by this section of the FCA on the function of making a living as a professional hunter.

20.3 Proposed addition of subsections 16A(7) and 16A(8)

(7) Any application for a licence under this section must be accompanied by a written motivation containing at least the following information:

- (a) the needs of the professional hunter;*
- (b) the type of firearm required; and*
- (c) such other information as may be prescribed.*

(8) The motivation contemplated in subsection (7) must be supported by the chairperson or an authorised office bearer of the relevant professional hunting association.

20.3.1 The exact same comments which were made in 19.7 and 189.8 above, are relevant in this instance.

21. SECTION 17

Licence to possess firearm in private collection.

21.1 Proposed deletion of section 17

Section 17 and 18 of the principal Act are hereby repealed.

21.1.1 Comprehensive argument against accepting this amendment because of its irrational nature, has been made in paragraphs 4.39 to 4.50 above.

21.1.2 Suffice it to remark that legally collecting firearms today and having the legal right to possess what entails private property denied tomorrow, surely cannot be legally justified. It must be expected that the Minister of Police will face serious challenges in court if this proposed deletion should be implemented.

22. SECTION 18

Permit to possess ammunition in private collection.

22.1 Proposed deletion of section 18

Section 17 and 18 of the principal Act are hereby repealed.

22.1.1 The wording of section 18 of the FCA, namely, "...possess ammunition in private collection..." is a misnomer. It should read "...possess cartridges in private

collection...”. The collection of different kinds and makes of handgun and/or rifle, cartridges, and/or shotgun shells is not about collection of ammunition.

- 22.1.2 There are 1,631 different calibres for different kinds of firearms on the list of calibres acknowledged by SAPS. Despite the SAPS list of “modern” calibres of firearms, cartridge collectors do not only collect cartridges on the SAPS list, or so-called smokeless cartridges of which the propellants have evolved from Cordite to nitroglycerine to nitrocellulose, but also cartridges which were manufactured to use black powder as propellant (i.e., used in Martini Henry rifles of the British empire from 1871). Black powder was first used by the Chinese in warfare in 904 AD.
- 22.1.3 As an example; in one of the more complete national cartridge collections for cartridges produced for the German 7,65x53 Mauser M1899, there are 203 different makes of 7,65x53 cartridges originating from Argentina, Austria, the Netherlands, Belgium, Brazil, the UK, Czechoslovakia, France, Germany, Greece, Norway, Peru, Portugal, Serbia, Sweden, Switzerland, the USA, Yugoslavia, the Middle East, and Pakistan. Each of these cartridges have a different headstamp on the cartridge with a vast number of different weighted bullets and different kinds and load-weights of propellant (with different primer makes and different metals used in the manufacture of cartridge casings). That is what cartridge collection entails; it is not just the hoarding of ammunition.
- 22.1.4 The cost to collect the cartridges as explained in 22.1.3 is considerable, and in many instances the selling of doubles of single cartridges or of cartridges still in original packing to other collectors all over the world, is a way of making up initial expenses to establish a cartridge collection.
- 22.1.5 In addition, the protection of just South African heritage through cartridge collection cannot be underestimated. Just collecting all the different cartridges manufactured by the former Swartklip (currently part of Rheinmetall Denel Munition (Pty) Ltd) or by PMP (part of Denel) already carries significant weight as cartridges of both these South African manufacturers are becoming very scarce in this country.
- 22.1.6 Cartridge collection is thus not merely the hoarding of ammunition but is very specifically focussed on certain types of cartridges, cartridges with different types of propellant, cartridges with different kinds of metal for casings, and cartridges with different types and makes of primers.

- 22.1.7 The deletion of section 18 from the FCA is not based on any research findings available to the citizenry proving that cartridge collections are dangerous to the public, poses a danger to officials of the law, or is the mere hoarding of ammunition for use in a person's own firearms. The deletion is thus devoid of any rationality or research-based proof of danger to anyone.
- 22.1.8 The fact that the deletion of section 18 also implies disowning a collector of property by the stroke of a pen, should not be discounted as it surely suggests serious litigation implications.

23. SECTION 20A

Consultative Forum

23.1 Proposed Insertion of section 20A

20A. The Consultative Forum is hereby established.

- 23.1.1 The proposed Forum is setup to regulated constant communications only between the Registrar and the Authority on the firearms issued to security service providers (or Private Security Industry Regulatory Authority – PSIRA). For purposes of functioning, sections 20B and 20C are also to be included in the amended FCA.
- 23.1.2 Despite the establishment of such a Forum being supported, there can be no rational reason why such a Forum should not also be established in order to establish constant communication between the Registrar and all other firearms stakeholders; i.e., like accredited dealers' associations, accredited gunsmith associations, accredited hunting associations, accredited sport shooting association, accredited professional hunters' associations, and accredited collectors' associations.
- 23.1.3 The sever lack and virtual non-existence of communication between the Registrar and all firearms stakeholders as mentioned in 19.1.2 is the main reason why there is massive disharmony between these two groups.
- 23.1.4 The FCA can only be successful if all role players are responsibly involved in its realistic implementation. Before the Minister of Police and the General Staff of SAPS do not grasp and understand this reality, there will always be animosities which are now solved in numbers of litigations, while they could have amicably

been solved around a discussion table (like a purposefully established Forum as proposed for the Registrar's interactions with PSIRA).

24. SECTION 22

Holder of licence may allow another person to use firearm.

24.1 Proposed amendment of subsections 22(a) and inclusion of subsection 22(b)

22. [Despite anything to the contrary in this Act but subject]

Subject to section 120(5), any person who is—

(a) at least 21 years of age and who, for at least three years, is the holder of a valid licence to possess a firearm issued in terms of this Act, may allow any [other] person above the age of 16 years to use that firearm while under his or her immediate supervision where it is safe to use the firearm [and for a lawful purpose]; or

(b) a professional hunter between the age of 18 and 21 who is a valid holder of a firearm licence issued in terms of this Act may allow any person above the age of 16 years to use that firearm while under his or her immediate supervision where it is safe to use the firearm.

- 24.1.1 Both the above-mentioned additions to subsection 22(a) and the inclusion of subsection 22(b) are irrational and disavows reality. There is no legal justification, neither credible research presented by the composers of the Bill proving the necessity for an age restriction on the use of firearms under supervision. Neither is there any proof that the age of 16 is the “magic” age limit before younger people may start to be taught the discipline necessary to handle and use firearms safely. The indicated age limit of 16 cannot be described in any other manner than being extremely arbitrary and devoid of any rationality.
- 24.1.2 Young people as young as 10 years of age are taught to shoot air rifles and .22 rifles and/or handguns by their elders to teach them shooting prowess and firearms safety, and to participate in competitions (nationally and internationally with Protea colours awarded for this sport).
- 24.1.3 Young people from as young as 12 years of age accompany their parents on hunting trips and are taught the intricate details of hunting and the ethics attached thereto. Similarly young people of 12 years accompany overseas parents on hunting safaris in this country. Both these subsections will place a serious block on business opportunities for professional hunters, as parents will not come to hunt in this country if their “underage” children cannot also hunt.

24.1.4 There cannot be any rational or research proven argument why the current section 22 should be amended, or irrational additions be added to it.

25. SECTION 23A

Ballistic sampling of firearms

25.1 Proposed Insertion of section 23A

23A. (1) The owner of every firearm, including any firearm licensed for—

(a) business purposes;

(b) business purposes related to the private security industry in terms of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);

(c) occasional and dedicated sports shooting;

(d) occasional and dedicated hunting;

(e) professional hunting; or

(f) public collection, subject to the firearm being able to safely fire any ammunition and the availability of ammunition for such firearm, must comply with a programme published by the Minister by notice in the Gazette to have the firearms in their possession ballistically sampled.

(2) Whenever any firearms licence referred to in subsection (1) is renewed or when there is a change in ownership, the original owner must ensure that the firearm is submitted to the designated firearms officer for ballistic sampling of the firearm, before the renewal or before the ownership of the firearm is transferred to any other person.

(3) A firearm submitted in terms of subsection (1) must be subjected to the relevant sampling process and handed back forthright to the owner and may not be kept by the officer designated by the Registrar to perform the sampling test.

(4) The sampling of firearms must be arranged in advance with the officer designated by the Registrar to perform the sampling test.

(5) The Minister may, by notice in the Gazette, determine a date by which firearms in the possession of different categories of owners must have been submitted for ballistic sampling, which date may be extended by the Minister.

(6) This section may be implemented over a period of time subject to financial and technical capability to give effect thereto.

(7) A person who in terms of this section submits his or her firearm for ballistic sampling must provide a cartridge for that purpose.

(8) If the person contemplated in subsection (7) cannot provide a cartridge due to its scarcity, the State will where possible provide a cartridge.

25.1.1 The value of ballistic sampling has been scientifically proven to be inadequate and unreliable for a number of reasons (see the November 2017 report by Dr David Klatzow – “Defective Science” and the fact that the State of Maryland in USA have stopped with what is called ballistic fingerprinting after the system has

not been conducive to solving one crime in 5 years due to the factually inadequate nature of ballistic fingerprinting -

<https://www.breitbart.com/politics/2015/11/08/maryland-ends-ballistic-fingerprinting-database-15-years-5-million-no-crimes-solved/> .

- 25.1.2 Despite the facts stated in 25.1.1, the successful implementation of the stipulations in the proposed addition of section 23A in urban centres is highly questionable. In rural areas of the country the system will be unimplementable and thus, impractical, and unrealistic.
- 25.1.3 In addition, shotguns have smooth barrels, and they shoot shotshells made up of hundreds of small lead pellets (the exception is a lead slug, but also shot through a smooth barrel). How one can even start to think that shotguns can be ballistically tested is beyond any logic or rational. It just further confirms the lack of knowledge and understanding of the subject matter the composers purport to write law on.
- 25.1.4 How the composers of the Bill propose to ballistically test smooth bore black powder rifles (which will have to be licensed in future if the Bill runs its course), totally defies logic.

26. SECTION 24

Renewal of firearm licences

26.1 Proposed amendment of subsection 24(4)

24(4) If an application for the renewal of a licence has been lodged [within the period provided for in subsection (1),] before the expiry of that licence, the licence remains valid until the application is decided.

- 26.1.1 This proposed substitution is supported.

26.2 Proposed addition of subsections 24(5) & 24(6)

24(5) If an application for the renewal of a firearm licence is made less than 90 days before the date of expiry of the licence, an administrative fine, as provided for in section 122 may be imposed, taking into account any explanation which the applicant may have presented in the application form for renewal of the licence; and

24(6) If an application for the renewal of a licence is made in less than 90 days before expiry thereof and an administrative fine has been imposed, this does not disqualify the applicant from the renewal of the licence.

- 26.2.1 The imposition of a requirement to renew a firearm licence at least 90 days before it lapses, without any sanction and/or prescript for the Registrar to finalise such a renewal within the 90 days before the licence lapses, is irrational and seriously flawed.
- 26.2.2 A required time frame should at least be placed on the CFR within which renewals should be finalised, and if not adhered to licence be considered to have been renewed by the Registrar. There cannot only be requirements for the public to adhere to in a firearm licensing procedure without CFR having to at least adhere to prescripts of PAJA (Act 3 of 2000) to make the process fair.
- 26.2.3 Firearms cannot be used or transported without valid licences. Inadequate administrative responsibility to finalise renewal procedures in reasonable time frames (90 days) cause legal firearm owners to become subject to arbitrary confiscation of legally owned firearms at roadblocks and at the worst leads to arbitrary arrests of legal firearm owners who are prejudiced because of the irresponsible implementation of an unsanctioned administrative system, which does not finalise renewals on time. Legal firearms owners are then forced to travel with expired licences for firearms for which they have submitted renewal applications on time as per legal prescript.
- 26.2.4 The imposition of a fine as proposed in the addition of subsection 24(5) for submitting an application for a firearm licence which has not yet lapsed is irrational in the extreme and cannot be logically defended under any circumstances.
- 26.2.5 It has become the norm for many police stations to require the public to make appointments before they can submit renewal applications. In many instances (for which there are adequate proof), these appointments are made within the 90 days before the licence lapses. It is not clear how a citizen can then be fined for submitting a renewal application within the 90 days in such an instance. Especially as the date of payment of submission costs can only reflect the date on which the monies were received, which is the date on which the application was received and not a date at least 90 days before the licence expires.
- 26.2.6 In addition there are many instances on record where Designated Firearms Officers (DFOs) did not hold to appointments made resulting in licence holders defaulting on submitting renewals on time and then having to forfeit firearms to SAPS for destruction. There is no sanction anywhere in the FCA to be imposed against a DFO for not taking responsibility for being the cause of a person who

could not renew on time, now losing property because of the DFO's slack administrative practices (this is not a hollow and generalised statement - proof of several instances of this nature can be furnished with sworn affidavits if required)

26.2.7 If the composers of the Bill would want to make rational insertions into the FCA, they could contemplate a fine if people were up to 90 days late with renewal applications after expiry of licences.

26.2.8 The addition of subsection 24(6) is unnecessary.

27. SECTION 27

Period of validity of licence or permit

27.1 The proposed amendment of the period of validity of section 15, 16, and 16A licences to 5 years instead of keeping it at the current 10 years, is irrational and administratively highly impractical.

27.2 Any SAPS official, on any level, who supports this amendment is not aware of the reality of the workload carried by CFR or by DFOs or is uninterested in rectifying the inadequate management of SAPS General Staff of their execution of their responsibilities to managing firearms in this country.

27.3 As it is, the CFR and Provincial firearms offices just cannot administratively cope with the current workload. Not because the people do not have the capacity, but because the CFR is seriously understaffed and DFOs are inadequately trained and protected on station level (where they more frequently than not are used to complete other policing tasks as well).

27.4 The same statements as the above re the rationality of the proposed amendments are relevant to the amending of section 19 licences to possess ammunition in public collections, and section 20 licences to possess firearms for business in game ranching and hunting, which are both proposed to be valid for only 5 years instead of the current 10 years.

27.5 The same can also be said of the irrational proposed amendment of section 20 licences to possess firearms for business purposes other than game ranching and hunting of which the validity periods have been reduced to 2 years instead of the current 5 years period of validity.

27.6 These irrational proposals are conclusive proof that the composes of the Bill have not consulted with all relevant parties as they say they have, which proof is reflected in the proposed amendments to section 27. If they had consulted with the CFR and with officers responsible for firearms licensing on Provincial level, they would have been told by the police officers themselves that the workload increase imposed by these amendments is unmanageable and irrational. If the SAPS General Staff were in agreement with the proposed amendments to section 27, they are proven to have serious disconnect with the realities their officers responsible for firearms have to work under on a daily basis.

27.7 The numbers of successful litigation against SAPS for transgressing the prescripts of PAJA (Act 3 od 2000) will increase, and the direct misuse of taxpayer's monies because of SAPS staff not being able to complete administrative tasks in the by law required timeframes, will increase. Already SAPS have arbitrarily (and illegally) increased the 90-day requirement for a government official to complete a task to 120 days due to Covid restrictions (see - <https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=27869&fbclid=IwAR0Ad9YUsMW55gfZ159UFi9NeJwmv-HsEpyhcq5HAY226v7MurlD9eNYXkU>) . The request was accepted by the firearms fraternity, but the 120-day limitation has now become the norm (stretching to as many as 250 days). The vast numbers of applications in arrears have been acknowledged by the Minister.

28. SECTION 28

Termination of firearm licence

28.1 Proposed addition of subsections:

Current text of subsection

(1) A licence issued in terms of this Chapter terminates-

(a) upon the expiry of the relevant period contemplated in section 27, unless renewed in terms of section 24;

(b) if surrendered by the holder of the licence to the Registrar;

(c) if the holder of the licence becomes or is declared unfit to possess a firearm in terms of section 102 or 103; or

(d) if it is cancelled in terms of this Act.

28.1.1 **Proposed addition of subsection (1A)**

(1A) If the licence is terminated in terms of subsection

(1) the holder of a licence must dispose of his or her firearm within 60 days of the termination of the licence in the following manner:

- (a) by surrendering the firearm to the nearest police station for destruction;*
- (b) through a dealer; or*
- (c) by having the firearm deactivated in the prescribed manner.*

28.1.2 The inclusion of this subsection is supported

28.2 **Proposed addition of subsection (1B)**

(1B) A holder of a firearm licence must surrender a firearm for ballistic profiling to a police station, before disposing of it in the manner referred to in paragraphs (b) and (c) of subsection (1A).

28.2.1 This proposed amendment is devoid of rationality as the firearm described, has been ballistically tested (in some instance two times or more already). Why it would have to be again ballistically tested is thus unclear.

28.2.2 If the amendment is to be included, it should then at least also include the same wording as in the proposed amendment to subsection 23A.(3). Otherwise, the owner has no recourse if SAPS do not complete the ballistic testing so that s/he can still adhere to the 60-day limitation.

28.2.3 This is yet another example of the Bill requiring the legal owner of firearms to be subject to a procedure, which s/he can default on if the police should not do the ballistic testing in time, with no sanction against the police if they would not complete their task in time.

29. **SECTION 31**

Prohibition of unlicensed trading in firearms and ammunition

29.1 **Proposed substitution and deletion of subsections:**

Current wording of section 31:

(1) No person may trade in any firearm or ammunition without a dealer's licence.

(2) Subject to subsection (3), a person who is not a dealer may dispose of a firearm or ammunition only through a dealer or as otherwise provided for in this Act.

(3) A person who wishes to sell or donate a firearm to a willing buyer or donee, as the case may be, may do so without the intervention of a dealer, but on such conditions as the Designated Firearms Officer may determine.

29.2 **Substitution of subsection 31(2)**

[Subject to subsection (3), a] A person who is not a dealer may dispose of a firearm or ammunition only through a dealer or as otherwise provided for in this Act.

- 29.2.1 This substitution is totally devoid of any rationality or reason.
- 29.2.2 If a legal owner of a firearm wants to sell it to a friend, s/he must now first sell the firearm to the dealer, and the friend can then buy it back from the dealer. If the owner wants to sell a firearm to a friend for R2,000, there is not guarantee that the dealer will give the original owner R2,000 for the firearm and then ask the new owner R2,000 for the firearm. There is no reason why the dealer should not ask money for his services. It surely cannot be perceived to be rational, or legal, for a government to force such kinds of prescriptive transactions on owners who want to sell their property (or on buyers who want to buy additional property).
- 29.2.3 The proposal becomes even more irrational when the sale or gifting of R200 worth box of 20 rounds of 9mmP ammunition is considered. If a legal firearm owner wants to gift a box of 20, 9mmP ammunition to a friend, s/he must now first sell it to the dealer so that the friend can buy it from the dealer (while the initial intention was a gift with no cost). Again, it can be stated that it surely cannot be legal for government to force such kinds of prescriptive transactions on owners who want to sell or gift their property (or on persons who want to accept a gift or on buyers who want to buy additional property).
- 29.2.4 In addition, it is common knowledge that the so-called electronic system whereby firearms are placed on to dealers' stock is seriously flawed as there are many instances where firearms are just not placed on dealers' stock by CFR for long periods (irrespective of the broken electronic system which does not operate).
- 29.2.5 The burden placed on firearms dealers to manage the process required by this amendment is unfair and unasked for. The current procedure where the willing buyer completes an ordinary SAPS 271 form as application for a new firearm licence has been in place and has worked for the past 17 years since the FCA's implementation on 1 July 2004. It is not clear what has changed after 17 years to justify these amendments to section 31.

29.3 **Deletion of existing subsection 31(3)**

Current text of subsection

31(3) A person who wishes to sell or donate a firearm to a willing buyer or donee, as the case may be, may do so without the intervention of a dealer, but on such conditions as the Designated Firearms Officer may determine.

29.3.1 The irrationality of deleting subsection 31(3) has been clearly demonstrated above.

29.3.2 How it can even be suggested that these proposed amendments to section 31 of the FCA were logically conceived, defies reality.

30. **SECTIONS 35, 49 & 63**

Renewal of licence

30.1 **Proposed addition of subsection 35(5)** - Renewal of manufacturer's licence
35(5) If an application for the renewal of a dealer's licence is not made within the period provided for in subsection (1), and is made when the date of expiry of the licence is less than 90 days from the date of application for renewal, an administrative fine, as provided for in section 122 may be imposed, taking into account any explanation which the applicant may have presented in the application form for renewal of the licence.

30.2 **Proposed addition of subsection 49(5)** - Renewal of manufacturer's licence
49(5) If an application for the renewal of a manufacturer's licence is not made within the period provided for in subsection (1), and therefore made when the date of expiry of the licence is less than 90 days from the date of application for renewal, an administrative fine, as provided for in section 122 may be imposed, taking into account any explanation which the applicant may have presented in the application form for renewal of the licence.

30.3 **Proposed addition of subsection 63(5)** – Renewal of Gunsmith's licence
63(5) If an application for the renewal of a gunsmith's licence is not made within the period provided for in subsection (1), and therefore made when the date of expiry of the licence is less than 90 days from the date of application for renewal, an administrative fine, as provided for in section 122 may be imposed, taking into account any explanation which the applicant may have presented in the application form for renewal of the licence.

30.3.1 There can be no rational reason to fine a person who wants to renew any kind of licence which has not yet expired. If the composers of the Bill want to make rational amendments hereto, they could contemplate a fine for people who are up to 90 days late with renewal applications.

31. SECTION 45

Prohibition of unlicensed manufacture of firearms and ammunition

31.1 Proposed addition of subsection 45(3)

45(3) It is an offence for any person, except the manufacturer of ammunition to be in possession of equipment designed and manufactured to reload ammunition.

- 31.1.1 This proposed amendment is but further proof that the composers of the Bill did not consult with relevant stakeholders before they endeavoured to write law on a field of expertise, they have no grasp for and have made no effort to even try and understand.
- 31.1.2 No proof of the danger to society caused by the private reloading of precision ammunition in an effort to ascertain high quality shooting results with a reloader's firearms, can be presented.
- 31.1.3 The negative economic impact the implementation of this single irrational and highly irresponsible proposed amendment to the FCA is vast and far reaching. Its implementation will cause the closing down of large numbers of remaining firearms dealers in this country. A very large part of firearms dealer's business is focussed on selling equipment for reloading purposes, as these are used by hunters, sports persons and by professional hunters alike to achieve accurate ammunition for purposes of precision shooting with their firearms and to save on costs for participating in hunting and in their chosen sport shooting discipline.
- 31.1.4 Thousands of personnel working in these dealerships will lose jobs. Many shooting ranges, which operate as businesses, will close because of a lack of clients using the ranges, with resultant job losses for thousands of their personnel.
- 31.1.5 How the Minister of Police and the composers of the Bill propose to counter the literally hundreds of millions of Rands worth of claims which will be brought against the Department of Police as compensation for already paid for reloading equipment in stock held by dealers, as well as for the loss of income dealers will suffer because they cannot sell these products to their clients, is poorly understood.
- 31.1.6 It is also not clear how the Minister of Police and the composers of the Bill propose to counter the literally hundreds of millions of Rands worth of claims

which will be brought against the Department of Police as compensation for loss of privately owned reloading equipment.

- 31.1.7 Two questions remain unanswered (a) how it can be construed as legal to declare a business activity which is legal today, illegal tomorrow; and (b) how the composers of the Bill would propose private owners of reloading equipment should get rid of their reloading property they have in their possession.
- 31.1.8 No doubt the firearms dealers will submit far better detailed arguments against the implementation if this irrational and irresponsible proposed amendment.

32. SECTION 85

Firearm storage permit

32.1 Proposed addition of subsection 85A

85A. (1) No person other than a dealer may provide storage facilities for firearms or ammunition to another person without a permit.

(2) Notwithstanding subsection (1) a holder of a firearm licence may in the prescribed manner authorise in writing another licence holder to store his or her firearm for a specified period.

(3) The provisions of subsection (2) do not apply to section 20 licence holders.

- 32.1.1 The addition of this subsection to the FCA is supported for its rationality.

33. SECTION 86

Firearm transporter's permit

33.1 Proposed addition of subsection 86(4)

Any person who is not in possession of a firearm transporter's permit issued in terms of this Act may not transport more than three firearms at a time.

- 33.1.1 There is no rational or logic in this arbitrarily imposed limit on the transport of legally owned firearms. The proven danger posed by the transport of more than three legally owned firearms must first be shown.
- 33.1.2 The proposed addition also does not take into account the fact that people from time to time move homes or places of residence. The imposition of this illogical limitation would mean that if a person would move home from Pretoria to Cape Town s/he would have to pay a licensed transporter to transport his/her property

while s/he could have transported his/her firearms by her/himself without additional costs.

- 33.1.3 It is also not clear if the wording, "...*any person*...", refers to the driver of a vehicle in which two or more hunters or sports persons are traveling to a destination, or if the wording refers to each one of the persons in the vehicle individually.

34. SECTION 91

Prohibition on possession of ammunition

34.1 Proposed amendments to subsection 91(1)

91(1) The holder of a licence to possess a firearm referred to in Chapter 6 may not possess more than [200] 100 cartridges for each firearm in respect of which he or she holds a licence.

- 34.1.1 Without been given the reasons for this arbitrary and irrational limitation on the possession of number of cartridges, which may be held for each firearm legally owned, no realistic comments can be made. The number indicated is nothing less than a "thumb suck" and holds no merit or legal or scientific justification. It is in plain language a ridiculous proposed amendment.

- 34.1.2 It is not clear how and why the arbitrarily number of 100 rounds are prescribed, and why it was necessary to change it from the original already unqualified 200 rounds of the FCA.

- 34.1.3 No danger to society has been proven if a legal firearm owner has more than 100 rounds per licensed firearm in his/her possession.

34.2 Proposed substitution in subsection 91(2) and addition of subsection 91(3)

91(2) [The limitation in] Despite subsection (1) [does not apply to], the Registrar may, on good cause shown, authorise -

(a) a dedicated hunter, dedicated sports person [or], a professional hunter, occasional hunter, occasional sports person or an accredited training service provider who holds a licence issued in terms of this Act or any other holder of a licence issued in terms of this Act [authorised by the Registrar] to possess more than [200] 100 cartridges for a firearm in respect of which he or she holds a licence [on good cause shown].

91(3) The Registrar in determining good cause must take into account the following:

- (a) Proof of the frequency of the use of the firearm;*
(b) the level of participation in the activity for which the firearm is registered;

*(c) the number of cartridges used per occasion for the particular activity; and
(d) any other relevant factors or circumstances which may be prescribed.*

- 34.2.1 Businesses operators conducting culling operations cannot wait for months for CFR to issue a permit to possess more than 100 rounds as they use much more than that number over two days of culling operations. They can also not expect dealers to carry adequate stock so that they can regularly buy ammunition from that source, as their business will suffer due to non-delivery on contracts signed with game farmers.
- 34.2.2 Sports persons who are compelled to use more than 250 rounds in a weekend's shotgun related competitions, are negatively impacted in that they will not be able to participate in a chosen sport because of a lack of administrative diligence if CFR is slow in issuing the relevant permits. A wingshooters conducting control of crop damaging pigeons and doves, regularly uses more than 500 shotshell per occasion.
- 34.2.3 Similarly sports persons competing in three-gun competitions over a weekend use more than 100 rounds per handgun, semi-auto rifle and semi-auto shotgun prescribed for that discipline. Participants in long-range gong shooting (i.e., PRS competitions) use more than 100 rounds in one morning session in a competition which frequently stretches over two days.
- 34.2.4 Limiting professional hunters to 100 rounds per licensed firearm is irrational and not practice related at all. Four hunting clients in a hunting party use much more than 100 rounds per licensed firearm. In addition, a professional hunter cannot stop a hunt deep in the bush because the rounds for a specific licensed firearm have been depleted and s/he needs to source additional rounds for a specific firearm.
- 34.2.5 Limiting training providers to 100 rounds per licensed firearm is absolute irrational and undefendable. These people use more than 100 rounds in training in a morning's session when training more than 5 persons (the norm rather than the exception).
- 34.2.6 Limiting security services to only 100 rounds per licensed firearm is irrational and impractical in that their personnel use more than 100 rounds per one day weekly training session. There can be no reason why these people should be negatively impacted in their ability to use firearms with confidence and with safety to the public.

- 34.2.7 If there is no time limit on the Registrar to finalise an application for a permit as proposed here, the exercise becomes futile as the application will just be ignored and not administratively attended to by CFR. The above examples of use of more than 100 rounds per occasion is adequate proof of the irrationality of this proposed amendment.
- 34.2.8 Currently applications for temporary export permits to hunt in neighbouring countries, applications for barrel changes, and applications for calibre changes are just not attended to by CFR. Proof for this statement is contained in large numbers of these kinds of applications of members just not being attended to or answered. There exists adequate proof of applications for barrel changes, which are outstanding for more than 18 months.
- 34.2.9 The irrational and arbitrary nature of this proposed amendment is proof that the composers of the Bill did not consult with relevant stakeholders before endeavouring to write law on a subject matter they clearly have no understanding of, or care to try and understand. The premise against which this amendment is proposed, is wrong and has not been proven to avert any purported danger to society just because legal firearm owners are limited in the number of rounds, which rounds they realistically use for participation in hunting, sport shooting, professional hunting and for training purposes.

35. SECTION 93

Loading or reloading of ammunition

35.1 **Proposed deletion of current section 93**

Current wording:

(1) Section 45 (1) does not apply to the loading of ammunition by the holder of a licence to possess a firearm for use in his or her licensed firearm.

(2) (a) A holder of a licence contemplated in subsection (1) may not have more than 2 400 primers in his or her possession for each firearm in respect of which he or she holds a licence.

(b) The limitation in paragraph (a) does not apply to a dedicated hunter or dedicated sports person who holds a licence issued in terms of this Act or any other holder of a licence issued in terms of this Act authorised by the Registrar to possess more than 2 400 primers for a firearm in respect of which he or she holds a licence on good cause shown.

(3) No person may load prohibited ammunition contemplated in section 92.

- 35.1.1 Legal firearm owners reload to achieve high standards in precision shooting, be that to adhere to the ethical requirements of hunting or professional hunting or

for high level participation in precision sport shooting disciplines (handguns, rifles, and shotguns). It is common knowledge in the international shooting world that a specific firearm's barrel delivers required precision shooting results with a specific bullet make and type, bullet weight, and length of bearing surface of the bullet, charge weight of propellant, primer type, and cartridge casing type. It is also common knowledge in the international firearms shooting world that no two rifle or handgun barrels are the same, and each requires its own combination of the mentioned precise components to achieve the precision serious shooting requires.

- 35.1.2 Factory ammunition just cannot achieve the same precision in shooting than what can be achieved through reloading. If one would want to search for a specific make of factory ammunition which ascertains precision shooting results in one sport shooting rifle, it will entail that one would have to buy at least eight different makes of cartridges to test which one will deliver the required precision in for instance the precision shooting of one's long-range shooting rifle over distances of 1,500m and further. This is an internationally acknowledged fact in the use of precision shooting firearms.
- 35.1.3 Continuous availability of the specific factory ammunition chosen in the above context, is highly dependent on availability with dealers who do not always hold enough stock. For the professional hunter this situation is detrimental to conducting a successful business. If s/he cannot buy the required make of ammunition which works best in his/her rifles, the hunting business will close because s/he will not be able to guide his/her clients with safety with backup firearms as s/he has no ammunition for that specific firearm. It is even worse if a client hires a firearm from a professional hunter on a two or three hundred thousand Rands worth hunting excursion, and the professional hunter cannot provide adequate numbers of ammunition for that rifle. It is thus an absolute business requirement for professional hunters to be able to reload his/her own ammunition in order to successfully conduct their hunting business.
- 35.1.4 In addition, there is a dearth in availability of ammunition for "Obsolete" and so-called "Wildcat" calibres. There are ammunition for Wildcats and less used and older calibres available on the global market, but these kinds of ammunition is not available in South Africa due to the very small demand.
- 35.1.5 An obsolete calibre ammunition means that no factory globally manufactures ammunition for such a calibre anymore and ammunition are therefore not available over the counter (i.e., the Remington 25-20 Winchester introduced in

1892, which is an excellent cartridge for hunting small game at ranges out to 120m, loaded with 60 to 86 grain bullets).

- 35.1.6 A Wildcat cartridge means that the cartridge was developed by a gunsmith, individual or manufacturer that never got to mass production and major manufacturers never produced ammunition for such a calibre.
- 35.1.7 To shoot Wildcat cartridges you have to develop and hand load ammunition yourself. The basis of a Wildcat is to offer ballistics previously unavailable in a certain type of firearm such as the entire genre current Thompson Centre Contender custom chambering.
- 35.1.8 Benchresters and hunters, experiment with Wildcat calibres for their potential inherent accuracy. The 300 Whisper is a perfect example. More than 6,000 distinctly named Wildcat calibres exists for exactly this reason, namely searching for the ultimate accurate cartridge (members own firearms in wildcat chambering in 221 Remington Fireball, 300 Whisper, 357 Herrett and 445 Super Magnum – all excellent accurately cartridges unavailable at gun dealers).
- 35.1.9 Hand loading of ammunition is time well spent on the reloading bench and in its own an essential part of the shooting sport. It is a challenge to develop effective and accurate loads.
- 35.1.10 A professional hunter has to reload for as many as 14 firearms as it is not only cost effective, but also helps in creating jobs at the component manufactures.
- 35.1.11 Cost of ammunition is another factor which is countered by purposeful reloading. A packet of ten, 500gr, cartridges for a 500 Jeffery rifle used to hunt dangerous game, costs R3,078 at the firearms dealer (thus R307.80 per cartridge). A reloader can with safety reload one of these cartridges for R103.00 if the casings are used for the first time. For the second and consecutive reloading of the same 500gr cartridge for the 500 Jeffery, the cost comes down as the casings can be used again. In some .30 calibres it is known that high quality casings can be reloaded as many as 15 times. A box of twenty, high quality, 308 Win, 180gr Norma Oryx cartridges costs R1,249 (thus R62.45 per cartridge). The price per cartridge for a hunter who hunts frequently and shoot on the range to ascertain a one-shot-kill, can reload the same cartridge with high quality 180gr Swift bullets for R27.00 per cartridge.

- 35.1.12 Apart from the need for accurate ammunition for precision shooting, cost is thus also a very important factor considered when reloading ammunition. It is not clear how the composers of the Bill can rationally argue for prohibiting reloading as it cannot be shown that reloading sport shooting or hunting ammunition poses a threat to the public. If reloading has not posed a threat to the public up to now, what has been proven to have changed to justify these irrational proposals?
- 35.1.13 In addition, the purchase of reloading equipment does not come cheap, and a reloader must save specifically to buy relevant quality precision reloading equipment. Cost to equip a relatively average private reloading facility can over time easily run into hundreds of thousands of Rands worth of reloading equipment, and firearm related cartridge building parts.
- 35.1.14 Private reloading is thus not about hoarding of ammunition, but about the reloading of quality precision shooting ammunition. It is also a serious cost saver for the serious hunter, and sport shooter.
- 35.1.15 The imposition of the irrational proposal of possessing only 100 rounds per firearm to be implemented in combination with the prohibition of reloading, will not only influence firearms dealers and shooting ranges as described in paragraph 26, but will have a serious negative effect on the economic viability of the approximately 15,000 game ranches/farms in this country. Hunters, who are the economic driving force for this sector, will just not be able to hunt as frequently for lack of adequate ammunition as they currently do. There is a lack of rationality in stopping reloading and forcing serious hunters and sport shooters to buy factory ammunition which is not as accurate as required and is not always available due to shortage in stock at firearm dealers.
- 35.1.16 Hunting's direct personal contribution to the hunting and wildlife sector in this country is calculated at R12 billion per annum (that does not calculate sale in firearms, clothing accommodation, transport, processing of meat, or taxidermy costs). This income will be eroded, and many game ranches/farms will either close or switch to domestic animal and crop farming. The effect thereof on the success of the recovery of the game numbers in this country will be dramatic and it will result in thousands of jobs being lost, with resultant serious economic decay in rural areas.

- 35.1.17 The tourism sector in rural areas, which is currently benefiting from national hunting tourism, will also be dealt a serious blow, as will all game meat processing businesses and taxidermy businesses. Thousands of jobs thus stand to be lost, just because of irrational amendments to the FCA.
- 35.1.18 Specific firearms and adequate high quality reloaded ammunition are the basis of hunting. Placing illogical limitations on these two “tools” of hunting will have serious economic consequences and it is suggested that the Minister of Police must be ready to defend the implications of economic loss as well as disowning of property in court.
- 35.1.19 It is thus highly questionable as to how the composers of the Bill can in paragraph 3 on page 133 of the Bill, declare that the Department of Environmental Affairs and the Department of Tourism were in agreement that the proposed amendments to the FCA should be imposed. Either the representatives of the two departments were seriously lacking in understanding the subject matter they were asked to comment on, or they were only consulted in a very quick manner without all amendments and the implications thereof being explained to them. It is seriously disappointing that the Minister of Police and the composers of the Bill can then even try to state that they had consulted widely before the Bill was made available for comment by the public. There is a serious challenge to the truth of the declaration in paragraph 3 on page 133 of the Bill.
- 35.1.20 The reloading requirements for serious sport shooters are similar to the requirements of the hunter. Precision shooting is a prerequisite for high level participation, and this can only be achieved if a sport shooter can reload his/her own ammunition.
- 35.1.21 The negative economic effect on shooting ranges if limitations in participation in sport shooting, will be the result of irrational deletion of legal private reloading of ammunition for each of a sport shooter’s discipline specific and specialised firearms.
- 35.1.22 The question remains as to how it is legally possible that an activity (reloading) can be legal today and be declared illegal tomorrow without researched proof that reloading poses dangers to civil society.
- 35.1.23 Without being able to reload, hunters, sports persons and professional hunters are being prejudiced by an irrational amendment, which once again proves the

fact that the composers of the Bill have no idea of, or grasp for, the subject matter they purport to write law on.

36. SECTION 120

Offences

36.1 Proposed addition of subsection 120(5)(c)

(5) A person is guilty of an offence if he or she gives control of a firearm, an antique firearm or an airgun to a person whom he or she knows, or ought reasonably to have known-

(a) to be mentally ill; or

(b) to be under the influence of a substance which has an intoxicating or a narcotic effect.

(c) to be a child under the age of 16 years

36.1.1 This arbitrarily imposed offence is devoid of any rational logic. No researched proof for danger to a child under 16 years of age in the use of a firearm can be presented.

36.1.2 Children are taught firearm safety and use by parents from as young an age as 10 years. It is not certain whether government will start imposing age limits on when young people may start to participate in soccer or any other sport.

36.1.3 Children participate in air rifle and air pistol shooting competitions from 10 years of age and receive Protea colours from the age of 14 for .22LR rifle and pistol shooting. There can be no rational reason why these young people should be denied the right to choose the sport they would want to participate in.

37. SECTION 124

Functions of Registrar

37.1 The proposed amendments to section 124, with inclusion of prescribed functions for the Designated Firearms Officer (DFO), is welcomed and supported.

37.2 The inclusion of section 125A and 124B are welcomed and supported.

38. SECTION 147

Disposal of firearms in case of death

- 38.1 The addition of subsection 147A regarding deceased estate firearms is welcome and supported

39. AMMENDMENTS TO SCHEDULE 1 OF FCA

39.1 Proposed insertion of Item 1B after Item 1A

Licensing of muzzle loading firearms

1B (1) Any person who possess a muzzle loading firearm at the time of the commencement of the Firearms Control Amendment Act, 2017, must apply for the licensing thereof within two years from the commencement of the Firearms Control Amendment Act, 2021, using a valid competency certificate.

(2) The competency certificate required in respect of a muzzle loading firearm at the time of the application for the licensing thereof shall remain valid until the date of the licence that had been issued and must be renewed in terms section 10A together with the renewal of the said licence.

- 39.1.1 No Firearms Control Amendment Act 2017 could be sourced anywhere in any Government Gazette. The amendment Act referred to is possibly the Firearms Control Amendment Act, 2006 (Act 28 of 2006).
- 39.1.2 There can be no rational reasoning for licensing muzzle loading firearms. A competency certificate has been adequate since 2006. It is not clear which research has indicated that muzzle loading firearms pose a threat to civil society or could be used in perpetrating domestic violence.
- 39.1.3 Legal owners of muzzle loaders and users of black powder have to complete proficiency training to acquire a relevant competency and then have to comply with additional legal requirements to possess black powder under the Explosives Act. The requirements to own and use muzzle loaders are already more strenuous than for owning and using modern day firearms. No logical argument can be made, or proof submitted that black powder firearms all of a sudden pose a threat to society.

39.2 Proposed insertion of Item 1C after Item 1B
Licensing of percussion cap-and-ball firearms

1C. (1) Any person who possesses a percussion cap-and ball firearm or a firearm in respect of which a licence was issued to that person prior to the coming into operation of the Arms and Ammunition Act, 1969 (should possibly read Firearms Control Act, 2000)—

(a) must, before the expiry of 18 months from the date of commencement of the Firearms Control Amendment Act, 2021, apply for a firearms licence to possess such percussion cap-and-ball firearm or a firearm in respect of which a licence was issued to that person prior to the coming into operation of the Arms and Ammunition Act, 1969;

(b) may lawfully possess such percussion cap-and-ball firearm or firearm—

(i) until the expiry of the period referred to in paragraph (a); or

(ii) if an application has been made for a licence to possess such percussion cap-and-ball firearm or firearm during the period referred to in paragraph (a), until such application has been decided; and

(c) who has not applied for a firearm licence in respect of that percussion cap-and-ball firearm or firearm before the expiry of the period referred to in paragraph (a), must surrender such percussion cap-and-ball firearm or firearm to the nearest police station.

(2) No prosecution may be instituted during the period referred to in subitem (1)(a) against any person found in possession of a percussion cap-and-ball firearm or firearm, referred to in subitem (1), without being in possession of a licence.

(3) The Service may dispose of any percussion cap-and-ball firearm or firearm surrendered to it in terms of subitem (1)(c) in accordance with the provisions of the Act.

(4) A receipt must be issued to the person who surrenders a percussion cap-and-ball firearm or firearm in accordance with subitem (1)(c).

(5) Percussion cap-and-ball firearms which were registered before 30 June 2004 as firearms must be licenced free of charge before the expiry of the period referred to in subitem (1).

39.2.1 No rationale can be presented why a person has two years to licence a muzzle loading firearm, and only 18 months to licence a percussion cap-and-ball firearm.

39.2.2 As is the case with the sudden requirement to licence muzzle loading firearms, there can be no rational reasoning for licensing percussion cap-and-ball firearms. A competency certificate has been adequate since 2006. It is not clear which research has indicated that percussion cap-and-ball firearms pose a threat to civil society or could be used in perpetrating domestic violence.

39.3 Proposed insertion of Item 1E after Item 1D
Licensing of actions, frames and receivers

1E (1) Any person who possesses an action, a frame or receiver—

(a) must, before the expiry of 18 months from the date of commencement of the Firearms Control Amendment Act, 2021, apply for a firearms licence to possess such action, frame or receiver.

(b) may lawfully possess such action, frame or receiver—

(i) until the expiry of the period referred to in paragraph (a); or

(ii) if an application has been made for a licence to possess

(iii) such action, frame or receiver during the period referred to in paragraph (a), until the said application has been decided; and

(c) who has not applied for a firearm licence in respect of that action, frame or receiver before the expiry of the period referred to in paragraph (a), must surrender such action, frame or receiver to a police station.

(2) In the case where such action, frame or receiver is not numbered, the required serial number must be applied in such non damaging way as may be prescribed

(3) No prosecution may be instituted during the period referred to in subitem (1) against any person found in possession of an action, frame or receiver without being in possession of a licence.

(4) The South African Police Service may dispose of any frame or receiver surrendered to it in terms of subitem (1)(c) in accordance with the provisions of the Act.

(5) A receipt must be issued to the person who surrenders a frame or receiver in accordance with subitem (1)(c).

39.3.1 No rational can be presented why a person has two years to licence a muzzle loading firearm, and only 18 months to licence actions, frames and receivers.

39.4 Proposed insertion of Item 1F after Item 1E
Re-licensing of firearms (so-called Green licences)

1F (1) Any licence which was—

(a) issued in terms of the Arms and Ammunition Act, 1969 or previous legislation; and

(b) not renewed as contemplated in this Act, remains valid for a period of two years from the coming into operation of the Firearms Control Amendment Act, 2021.

(2) The Minister may, with the approval of Parliament, extend the period referred to in subitem (1) for a maximum period of two years.

(3) Item 1(1) and (3) apply with the necessary changes required by the context, to item 1A.

(3A) The holder of a licence contemplated in item 1F must apply for the corresponding licence in terms of this Act within the period specified in item 1F(1) or the extended period referred to in subitem 1F(2).

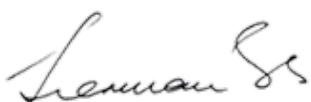
- 39.4.2 The inclusion of this amendment is a clear legislative attempt to circumvent an existing court order of Judge Prinsloo of 2009 in the so-called SA Hunters case and constitutes a breach of the *trias politica* principle on the authority of the courts.
- 39.4.3 It is not understood how the Chief State Law Advisor could purportedly support this inclusion in the proposed amendments as being sound legal practice. If this amendment should be accepted it would create serious precedent in that legitimacy would have been afforded government to just make a new law, or to amend existing law, whenever they do not want to adhere to an order of a high court of this country.

This ends the comments of the National Hunting and Shooting Association on the irrational and ill-conceived proposed amendments to the FCA as contained in the 2021 Draft Firearms Control Amendment Bill into which the legal firearms owning fraternity in this country was denied any input.

Until the policing in this country is not placed on par and police corruption wiped out, the increasing circle of violence its citizenry is subjected to will not be brought under control. The unchecked source of illegal firearms finding their way into the hands of criminals is not situated in the hands of the country's citizenry who legally own firearms. These firearms come from police stock and firearms in police custody. According to newspaper reports, more than 15 million rounds of handgun ammunition were stolen during the July 2021 unrest from a container whilst it was in Police custody. Legal firearm owners should not be held responsible or punished for the Police's lack of control over firearms or ammunition.

The effect of the thousands of firearms which had been stolen by Col Prinsloo from police custody, and which are presently in the hands of criminal gangs, should also be properly investigated as a cause of the rise of the criminal use of firearms.

Respectfully,



Dr Herman Els
Executive Chair