

WRITTEN SUBMISSION ON THE DRAFT FIREARMS CONTROL AMENDMENT BILL, 2021

The Secretary for Police Service
Civilian Secretariat for Police Service
C/o Email: comments.fcabill@csp.gov.za

Dear Sir/Madam,

COMMENTS on and OBJECTIONS to the FCA AMENDMENT BILL - GOVT GAZETTE No 437 OF 21 May 2021

This submission is written in response to the above-mentioned Firearms Control Amendment Bill, 2021. Currently the SAPS is unable to effectively implement and enforce the Firearms Control Act, 60 of 2000, as amended, yet the proposals in this Bill will drastically increase the work-load of the Registrar of the Central Firearm Register and the staff. These ill-considered amendments will not improve any of the bottle-necks or problems that are currently experienced, but will create uncalled for barriers to legal firearm ownership in South Africa. Specific areas of concern include:

1. PREAMBLE OF THE ACT

The Preamble of the existing Act reads as follows:

PREAMBLE

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;

AND WHEREAS the Constitution places a duty on the State to respect, protect, promote and fulfil the rights in the Bill of Rights;

The proposed amendment deletes the first three statements in the Preamble of the existing Act. It is a complete mystery as to why the drafters of the Draft FCA Amendment Bill, 2021 saw it fit to do so, since the new wording does not improve the Act – on the contrary – it literally deletes a person's right to life and security with the stroke of a pen!

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From this, one can draw only one conclusion, and that is that every person's right to life and security and the right to protect those rights are, by implication, declared null-and-void by the deletion of these three statements from the Preamble to the Act.

We strongly object to these amendments which are completely totally uncalled for and show a total lack of concern for the safety of ordinary citizens by those responsible for the drafting of these amendments and their superiors. We, therefore, propose that the Preamble of the Act remains as is, except for one change to the third sentence:

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

The reason for this proposal is because that is the truth on the ground – there is no denying it! **Statistics prove that an extremely small minority of violent crimes are committed with legal firearms used by the licensed owner of that firearm.**

Furthermore, millions of rounds of ammunition were looted during July this year in KwaZulu-Natal. None of those looters were legal firearm owners and none of those rounds of ammunition will ever end up in the hands of legal gun owners!

2. SECTION 2 of ACT 60 of 2000

Purpose of Act

2. The purpose of this Act is to—

- (a) enhance the constitutional rights to life and bodily integrity;
- (b) prevent the proliferation of illegally possessed firearms and, by providing for the removal of those firearms from society and by improving control over legally possessed firearms, to prevent crime involving the use of firearms;
- (c) enable the State to remove illegally possessed firearms from society, to control the supply, possession, safe storage, transfer and use of firearms and to detect and punish the negligent or criminal use of firearms;
- (d) establish a comprehensive and effective system of firearm control and management; and
- (e) ensure the efficient monitoring and enforcement of legislation pertaining to the control of firearms.

2.1 Amendment of section 2 of Act 60 of 2000

Section 2(a), 2(b) and 2(c) of the Preamble of the principle Act are scrapped by the FCA Amendment Bill, 2021 which now reads as follows:

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

"(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;"

2.2 OUR COMMENTS AND PROPOSALS

From this amendment it is, once again, blatantly clear that the drafters of the FCA Amendment Bill – and therefore, the Legislator -- has no regard, whatsoever, for the “constitutional rights to life and bodily integrity” of ordinary citizens of this country! For them, it took only one stroke of a pen to remove those rights from the law-book.

The inclusion of this clause as a substitute for the existing Section 2(a) also exposes the reason why the first two sentences of the Preamble to the principle Act “had to be scrapped”! These declarations and the existing Section 2(a) clearly enshrines a citizen’s rights to life, security and bodily integrity. **The new, amended Section 2(a) is another piece of the puzzle to remove those individual constitutional rights.**

Furthermore, since it is the intention of the Legislator to remove a citizen’s right to self-defence as a motivation to own a firearm, it is essential to insert this amendment. If the act continues to state the purpose as to enhance an individual’s constitutional rights to life, security and bodily integrity, it will be impossible for the legislator to motivate the removal of Section 13 and Section 14 which makes provision for the issuing of a licence for self-defence.

In short, the hallmark of this piece of proposed legislation is that it will do absolutely nothing to prevent violent crimes and to reduce the availability of illegal firearms, while it goes out of its way to impede the ability of ordinary folk to get access to a legal firearm that is so desperately needed in a crime-ridden and violence ravaged country like South Africa and served by a totally incompetent Police force.

We, therefore, strongly object to this ill-considered and degrading amendment and propose that Section 2(a) remains unchanged as is in the principle Act.

2.3 Insertion of sections 2A and 2B in Act 60 of 2000

3. The following sections are hereby inserted in the principal Act after section 2:

Principles of Act – Section 2A

(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

The insertion of Section 2A(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; is the final piece of the puzzle! Now the right to possess a firearm to defend one’s life; ensure one’s security and protect one’s bodily integrity is reduced to a mere conditional privilege! (See Section 2(a) of the principle Act)

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This is an outrageous, demeaning insult to all South Africa's citizens -- especially to the hundreds of thousands of law-abiding gun owners who have over the years bent backwards to co-operate with Government. This is an insulting amendment and we trust that the various professional and sporting organizations will unite against these amendments!

We strongly object to this amendment which, once again, shows a total lack of concern for the safety of ordinary citizens and we propose that Section 2A(a) be scrapped completely from the FCA Amendment Bill.

Objects of Act

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;"

We believe this heading is linguistically incorrect. The Objects of the Act are guns, ammunition, licenses, etc. What is stipulated under this heading, are in fact the Objectives of the Act – i.e. what the legislator wants to accomplish with this act.

Once again, the intention of the various stipulations of this amendment is clearly to put as many obstacles as possible in the way of law-abiding citizens in order to prevent them from obtaining licenses, and to restrict their freedom of choice as far as firearms are concerned.

At this stage we will not comment any further on this section before the regulations are published.

3. SELF-DEFENCE:

Section 13 of the act currently provides for the issuing of a licence for self-defence.

This section is removed in the proposed amendments. Therefore, **no licences will be issued** for self-defence and self-defence will not be accepted as a motivation for any firearm licence. **Section 14**, which provides for owning a limited firearm (semi-automatic rifle or shotgun) for self-defence, will also be removed.

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Removal of self-defence as motivation for a firearm is of grave concern. Violent crimes, as per SAPS' own statistics, are on an ever-rising trajectory, and these are usually committed with illegal firearms.

According to Minister of Police, the removal of firearms for self-defence will help to reduce violent crime. Suggestions were made that licensed firearms that are lost or stolen from legal firearm owners, land in the hands of criminals and thus lead to a growing number of illegal guns.

During the past 12 years the SAPS have lost more than 26,000 firearms (police firearms and firearms in their custody). For the Minister of Police to claim that legal firearms in the hands of citizens are the reason for the growing number of illegal firearms is irrational, and just not true.

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 allege that the guns in the hands of lawful firearms owners are the "pool" of illegal firearms ending up in the hands of criminals is just not backed up by statistical facts.

The number of people who lose their firearms annually due to their own negligence is miniscule, yet the Minister of Police now wants to punish the overwhelmingly majority of responsible firearm owners who guard their weapons and keep them safe! Due to the negligence of a few, the majority may not own a gun to defend their Constitutional Right to Life and the lives of their dear ones.

This is not only grossly unfair legal treatment, but also undemocratic – the majority must pay for the sins of the minority! Furthermore, we also believe it is **unconstitutional**. A person who is guaranteed the Right to Life by the Constitution, (which right is also enshrined in the principle Act) must surely also have an **implied right** to defend his/her Right to Life with whatever means to his/her disposal.

A number of Policemen also lose their firearms annually through their own negligence. In line with the above-mentioned reasoning, the whole Police Force should now be disarmed because of the negligent few. **No, of course not, that will be illogical and so is the disarming of civilians to defend themselves.**

The Police is unable to protect the lives and property of individual citizens, as was again clearly demonstrated by the violent looting mobs during mid-July of this year. So if the Police cannot protect the citizens against criminals, then the citizens must surely have **the right and means** to defend and protect themselves. Firearms for self-defence are the only solution up to, and until the Police can prove their capacity to defend and protect individual citizens from harm's way.

The scrapping of Section 13 and Section 14 is therefore totally illogical, unfair and most probably also unconstitutional. **We strongly oppose these changes to the Act and propose that Section 13 and 14 remain unchanged.**

If the Minister honestly wants to reduce violent crimes, then he should bring **back the death penalty for violent crimes committed with firearms.** This is a sure way to solve that problem!

Something that really stands out in the FCA Amendment Bill as a whole is the Minister of Police's inability or total refusal to accept the S.A. Police Service's incapacity to fulfil their constitutional duty to protect the lives and property of innocent law-abiding citizens and their total ineffectiveness when it comes to preventing and curbing crime -- especially violent crimes involving firearms.

4. FIREARM COLLECTORS – SECTION 17 AND SECTION 18

Private collectors hold collections worth millions of rand and **with the removal of this category of licences these collections will become worthless overnight.** Furthermore, it will be a sad day for South Africa's heritage if these unique artefacts are to be destroyed, especially in view of the fact that collectable firearms are seldom suitable for criminal use. **We strongly object to these amendments.**

5. OCCASIONAL HUNTING OR SPORT SHOOTING

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.

The inclusion of this subsection is ludicrous and clearly demonstrates the lack of insight of the drafters of this Bill. Shooting-ranges are privately owned businesses and open to the public to use as and when the individual wants to, or are otherwise shooting clubs open to members. The prerequisite that shooting ranges will now be required to give permission to sport shooters to shoot at their business is a totally irrational requirement for a Section 15 licence.

Occasional hunting is conducted all over the country. There are literally thousands of game farms that offer hunting opportunities in this country. Occasional hunters can literally pick and choose – depending off course on what they can afford to pay. To now require an occasional hunter to present written proof that he may hunt **on a specific property** before a Section 15 licence can be issued, makes no sense at all.

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Even if he does get the written permission required, it doesn't mean he has to hunt there. So why bother with such a ridiculous prerequisite. **We, therefore, strongly object to amendment 15(2A) and propose that it be scrapped completely.** Once again, it clearly shows how out of touch with, and ignorant the drafters of this Bill are with the reality that they are trying to legislate on.

6. DEDICATED HUNTERS AND DEDICATED SPORT SHOOTERS – Section 16

For dedicated hunters, the reduction in the number of rifles they may own is a direct impediment on their ability to participate in their sport. One cannot help to wonder why the hunting and sport shooting sector is specifically targeted, while criminals continue to act with impunity. Why does Government not focus on a holistic anti-crime and judicial strategy to curb violent crime in this country, instead of targeting law-abiding owners of legal firearms? Hunters are widely recognised as the most responsible and compliant firearm owners, yet their way of life is impacted negatively by these proposals. **We, therefore, strongly object to this proposed amendment of Section 16 of the principle Act.**

7. RENEWAL OF LICENCES - SECTION 27 - Period of validity of licence

The proposed change in the validity period of a licence prior to renewal is disturbing in view of the additional administrative workload it will create for the Registrar of the Central Firearm Register and the staff. In Section 27 an amendment is proposed for all licences to be valid for only 5 years, except for a licence for business use which will only be valid for 2 years.

This is completely senseless, because then the CFR will have to issue approximately 3 – 6 times as many licences as before – or maybe even more! One may only have one handgun for self-defence (that will fall away) but hunters and sport shooters own numerous rifles that will now have to be licensed every 5 years instead of only every 10 years as is the case presently. Instead of getting their new firearm licences within 90 days as is envisaged by the Act, firearm owners, at present, wait for more than 12 months for renewals! And if proof is needed, we can supply that. **We therefore strongly object to this impractical amendment of Section 27 and propose that the period of validity of licences remain unchanged, or even be extended.**

8. CONCLUSION

Some of the most significant amendments proposed in the Draft Firearms Control Amendment Bill, 2021 that is of grave concern to us, relate to changes made to the Preamble to the Act; the Principles of the Act and the insertion of the Objects (sic) of the Act; the firearm licences and specifically the removal of specific types of licences previously catered for in the Act. This, of course, includes the controversial removal of Section 13 and 14 licences which mean that citizens will **no longer be able to apply for a licence to own a firearm for self-defence.**

Surely South African citizens must have the right to defend their right to life and the right to security of the person, as **South Africa was ranked in 2020 as the sixth most dangerous country to live in** out of 144 countries surveyed world-wide. (Businesstech, 20 November 2020) <https://businesstech.co.za/news/lifestyle/450267/south-africa-ranked-among-unsafest-countries-in-the-world-as-citizens-live-in-fear/>

In this document we comment on these proposals as well as others that are of personal concern and **we offer suggestions** to rectify some of the proposed changes that we regard as ill-considered and flawed. However, the mere fact that we do not comment on each and every proposed amendment to the FCA, **should not be construed as support for those changes** to the principle Act.

One thing that stands out in these amendments, is the Legislator's desire to make it as near to impossible as possible for ordinary law-abiding citizens to obtain a licence for a legal firearm, whilst, at the same time doing absolutely nothing to curb violent crimes, or the availability of illegal fire-arms.

From these amendments one gets the impression that those who drafted the Bill, believe that most violent crimes are committed by legal firearms and that these weapons are also the source of all illegal firearms in the country. **Nothing can be further from the truth and the Police's own statistics defies such a notion.**