



SAPS Central Firearms Registry Accreditation 1300050

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**30 March 2006**

**Director P van Vuuren**

Legal Services: SAPS

Private Bag X302

Pretoria

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*Dear Director van Vuuren,*

## **COMMENTS ON THE PROPOSED AMENDMENTS TO THE FIREARMS CONTROL ACT (ACT 60 of 2000)**

The proposed amendments to the Firearms Control Act (Act 60 of 2000 as amended) as are indicated in Notice 314 of 2006 published in volume 488 of Government Gazette no 28545, dated 24 February 2006, has reference

The National Shooting Association supports the majority of the proposed amendments contained in the proposed Firearms Control Amendment Bill.

There are, however, some proposed amendments we would like to comment upon.

### **1. Regulations**

From the outset it is difficult to comment sensibly on all amendments as the content of Regulations that might be drawn up in respect of some amendments are not known and might have a different effect in practice than that which can be inferred from the proposed amendments to the Act.

We urgently request that the proposed amendments to the Regulations also be published for public comment at the same time as the final amendments to the Act are put forward for public comment before tabling the final amendment in Parliament.

In any other manner comments to amendments to the Act are made with less content and context than it would have, and could be done with, if one could also evaluate the proposed changes to the Regulations at the same time.

### **2. Definition of ammunition**

The current wording is not clear enough and we request a clearer and a more precisely worded definition. We submit that a primer cannot constitute ammunition, as it is only part of a cartridge

despite it being explosive.

### 3. “Antique Firearm”

The proposed amendment to the definition of “antique firearm” implies that muzzle loaders dating from later than 1 January 1900 will all have to be licensed. Although we could try to understand that these type of firearms need to be controlled in some or other manner, we cannot see how the proposed amendment enhances the Purpose of the Act as stipulated in Section 2 of the FCA (Act 60 of 2000 as amended).

For the same reasons that shotguns and rifles are not deemed as firearms with which firearm related crimes are committed, muzzle loaders can surely not be seen as firearms with which such deeds are perpetrated.

### 4 Definition of fit and proper person

We suggest that the word “...*substantially*...” be deleted from the proposed insertion (f) of the definition for “fit and proper person”. If one has to conform substantially to the requirements of Section 9(2), it could mean that one could possibly not have to comply with all the stipulations of Section 9(2). Our contention is that an applicant conforms to the requirements, or not.

### 5. Definition of juristic person

A Trust cannot use a firearm, only people can. If individuals in a Trust are declared competent to use a firearm held in a Trust, they should not be disqualified to use such a firearm as any other person is able to do within the confines of the stipulations of the FCA and it's Regulations in terms of where a firearm may be used.

### 6. Definition of brokering service

It is our contention that the definition for “*brokering service*” is too widely formulated and should be narrowed down if the concept must be included in the FCA, which we believe it shouldn't as there are other Acts that make provision for these type of instances.

It is our contention that the proposed sub-section (c) could be interpreted to include banks, the Post Office, courier companies, and even individuals who would inform other shooting of hunting club members of a specific firearm up for sale at a specific place.

### 7. Proposed amendment to Section 4

We would request a clear and exact explanation in the amended Regulations as to what the “...*discretion of the Registrar*...” would be in respect of the proposed insertion of paragraph (g) in Section 4 of the Act (*a device attached to the muzzle of a firearm to muffle the report*). In other words when will possession of such a device be granted and when disallowed. As the amendment stands now it creates another gray area in the Act if it should be promulgated as such.

Silencers are used extensively in the game ranching and game capture industry, as well as on the open plains of the karoo for long shots by highly qualified hunters, or sport shooters for accuracy purposes. In any event, silencers can be produced by anyone that can work metal.

We can not see how this amendment can be policed fairly and realistically in practice, as the mere use of a animal bottle teat (dummy) can also produce the same effect than that of a “silencer” manufactured from metal. Moreover, some muzzle brakes can be mistaken for “silencers” and may lead to irregularities in the enforcement of this proposed amendment.

### 8. Proposed amendment to Section 6

We accept that the phrase “...*as the Registrar may require in the circumstances*...” will be clearly described in Regulations, otherwise it is another gray area to be created, despite it being an amendment which could streamline the current process significantly.

## 9. Proposed amendment to Section 10(2)

We would request that the period of 5 years for reapplication for competency be extended to at least 10 years, just to simplify the process and to give recognition of capacity and reality in terms of the SAPS (DFO) having to execute this duty.

## 10. Proposed amendment to Section 12

If Section 12(2) states that “*Every holder of an additional licence must comply with all the requirements for the issue of a licence in respect of the firearm in question.*”, it is not clear why this amendment (inclusion of (4)) re custodianship of the safe where the firearm is kept, is suggested.

We interpret such an amendment to mean that the holder of the additional licence will then only be allowed to open the safe if the custodian is present. Surely such a situation defeats the object of an initially very innovative system of awarding an additional licence for a specific firearm.

## 11. Proposed amendment to Section 16

We support this amendment proposing dedicated hunters and sport-shooters to possess semi-automatic shotguns whole heartedly.

## 12. Proposed amendment to Section 17

We cannot support the suggested insertion of Section 17(1)(ii) if the concept, *inoperable*, would mean that the firearm is to be deactivated. Last mentioned action would mean that the monetary value of privately held collections would be voided, resulting in collectors losing large sums of money they have invested in acquiring such firearms for their collections (a figure of R700 million is generally accepted to be the value of firearms in private collection). The promulgation of this proposed amendment would amount to the State declaring property of individual citizens forfeited if these firearms have to be made inoperable.

If this amendment does get accepted, we would request a clear definition of *inoperable* to be included in the definitions of the Act. The exact procedure must also please be described clearly in the Regulations.

We accept that the qualifications inferred to in the insertion of Section 17(2) in terms of “*...who qualifies to collect the firearm or prohibited firearm...*” will be clearly described in Regulations to be acted upon by accredited collectors associations.

The proposed insertion of Section 17(c) “*...storing moving parts of a semi-automatic firearm and prohibited firearm separate from, etc...*” can only make sense if the firearm under discussion is not deactivated.

We cannot support the deletion of Section 17(4) as the purpose of collection is surely to be able to use a collected firearm “*...where it is safe to use the firearm and for a lawful purpose...*” in order to prove its value as a collectors item, in addition to the fact that the purpose of collection is surely to be able to fire the specific firearm from time to time. Licensed collectors have shown ability to be responsible through their associations which have very strict self imposed rules as you are no doubt aware of.

## 13. Proposed amendment to Section 18

If the proposed insertion of Section 18(1)(ii) would be promulgated, we cannot see how the rest of Section 18 can still be part of the Act, as the items then in a collector’s possession (i.e. the empty cases of cartridges) do not constitute ammunition or cartridges in terms of the definitions of the Act. Why a person would then by law have to be limited to possess only 10 such worthless items (per calibre) is not clear. It is also not clear why one would want to collect such worthless items, as the purpose of collection is surely to collect the original item. As comparison this amendment could be compared with a situation where a collector of small model cars would have to take off the wheels of these models so as to ensure that they cannot move – making them worthless as collectors items.

We can also not see how Section 18(3) could be included in the Act if the items under discussion have been deactivated “*...in the accordance with the prescribed specifications...*”. If, however, the

intention is to make such items inoperable in the context as proposed in terms of the proposed amendments to Section 17 (inoperable), then one could accept that procedures will be described in Regulations as to how this can be done realistically without permanently damaging such collectable items. Collectables are only of value if such items can operate for the purpose it was intended.

In addition, NSA has been advised by experts in the field that deactivating cartridges of especially older make, can and is, extremely dangerous and should not be tried if the person is not 100% conversant with the process.

We request that the amendments to Section 18 rather not be included in the final amendments to the Act.

#### **14. Proposed amendments to Section 19**

The same comments made in respect of the proposed amendments to Section 18, is valid in this instance. We cannot see why a private collector and a public collector (i.e. museum) should lose the value of their collections. That is why they are being licensed as collectors in the first instance.

We reiterate, if it is necessary to deactivate firearms and ammunition in collections, why is it necessary to licence such items at all, as they then do not construe operable firearms or ammunition.

#### **15. Proposed amendments to Section 102 and 103**

The proposed amendments creates the impression that the Registrar will have all power to decide when a person is unfit, and for how long, without stating minimum and maximum time periods for specific transgressions. The amendment creates another gray area which will first have to be tested in court to determine exact procedure, before it can be implemented applicably if it should be accepted.

If the Registrar should be authorised to declare a person unfit after a court has decided otherwise, it seems to point to a system under which a person can be convicted and punished twice for the same offence – once again without clear indication as to exact power and competency on the part of the Registrar. Discretion can only go so far, and the NSA is of the opinion that allowing so much discretion without clear guidelines is too much authority rendered to the Registrar, which is responsible for the administration and implementation of the Act, and not a court of law. One government body cannot be implementer and evaluator at the same time.

#### **16. Proposed amendment to Section 109**

We believe that this proposed amendment may be unconstitutional and that this issue of law enforcement is adequately covered by the criminal procedures act.

We request this amendment not to be included.

#### **17. Proposed amendment to Section 118**

The term “...*dispossessed*...” is open to a wide and undefined interpretation without the term being taken up in the definitions of the Act. We request a clear indication per definition to be given as to the exact meaning of dispossessed.

#### **18. Proposed amendment to Section 119A**

Surely there must be a simpler way of stating the content of the proposed amendment ! As it stands now it is confusing to say the least.

The last section of the proposed amendment reading: “...*where it is proved that adequate documentary proof of the handing over and receipt of the firearm or the keys to the additional holder is not available or could not be produced.*”, also seems to be a contradiction of the proposed amendment to Section 12 (see point 10 above).

The proposed amendment to Section 119A could be interpreted to mean that the holder of a licence could only by way of documentation allow the holder of the additional licence for the same firearm to use or have access to such a firearm or have access to the safe where such a firearm is kept. As we

read the proposed amendment this action is required if such people do not want to transgress the law if the specific firearm should be lost or stolen. We are not aware of any stipulation in the Act or in the Regulations (2004) stating that the principle holder of the licence is required to produce documentation to the additional licence holder to use the specific firearm or have access to it, other than the additional licence holder having to live on the same premises. The fact that the principle holder of the firearm licence would now have to render documentation to the additional licence holder for use and access to the specific firearm in order to prove that they were not negligent should the firearm become lost or stolen, has no logic. Additional licence holders are licensed. Do their licences not require the same responsibility than is required from "ordinary" licence holders ?

The manner in which the proposed amendment is worded also presumes guilt, rather than presuming innocence until proven guilty.

We submit that the proposed amendment is unclear and contradictory, and if it must be included for whichever reason as an amendment, that it should be re-written to clearly state the intention of the law maker.

#### **19. Proposed amendment to Section 132**

The NSA does not support the inclusion of this amendment if it should mean that the proposed new body will only have an informal function. We submit that the stipulations as they stand in the Act under Section 132 should rather be maintained. If it is important to change the name of such a body as stated in Section 132 to be named a "consultative forum", the NSA has no objection to such an amendment.

If the proposed amendments would mean that a consultative forum will be equal to the "forum meetings" held with the Minister during September 2005 and during January 2006, then such meetings are meaningless in terms of real inputs re the FCA as such meetings have no substance other than being a conversation platform (one way communication). Irrespective of the fact that the NSA highly appreciates the fact that the minister makes time to speak to the firearms fraternity in the way he did in the two examples quoted, the need for a formal forum or committee is in our opinion essential to ascertain real inputs into the implementation of the Act by the firearms fraternity in this country.

We also submit that the stipulations as they stand in the Act represents the constitution of a formal body of expertise with which the minister can consult, while it seems to us that the proposed amendment calls for an informal body to be constituted. We do not support the last mentioned situation as we believe the implementation of the Act to be of serious concern to the firearms fraternity in this country, and that that specific position should be acknowledged by the law maker. Otherwise why the accreditation of associations ? Formal bodies make for formal decisions and actions, while this is not necessary true in respect of decisions taken by informal bodies.

#### **20. Proposed amendment to Schedule 1 of the principle Act**

We understand the dilemma the minister might face in the promulgation of the proposed amendments to Section 24 in respect of people who might have given up firearms they held legal licences for before the proposed amendments come into place. We do, however, accept that some form of reparation will be made to individuals who might have had to give up legally owned firearms between 1 January 2005 and 31 March 2006, before the promulgation of the proposed amendments take effect. After all, the case can be made that such people have been dispossessed of a legally owned item by the State.

#### **21. Proposed amendments to the FCA not included in Notice 314 of 2006.** (not in order of priority)

##### **21.1 Clear indication of time limit on processing applications**

In the case of especially new firearm licences, it is requested that a limit be placed on the time taken to process license applications from the time applications are received until they have been finalised (i.e. 6 months). Where after the Registrar should be compelled to give adequate reason why the process has to take longer. This is an important matter to remove public uncertainty in respect of the

implementation of the FCA, and curtails the need to impose the stipulations of Act 3 of 2000 (Promotion of Administrative Justice Act) in the process.

## **21.2 Provisional Licenses**

Because custom-made firearms cost vast amounts of money and can take up to two (2) years to build, a system of provisional licenses should be provided for in such instances. This, so that the proposed customer can give a gunsmith the task of building such a firearm with confidence, and with the knowledge that the gunsmith will receive the money for such a firearm. In many instances purpose built firearms cannot be resold by gunsmiths as there are no other customers that want such a firearm, or for who it fits.

## **21.3 Changes to Section 91**

We would urgently request for a change in Section 91 regarding the number of rounds that may be in possession of a firearm owner. The current stipulation of only 200 rounds for non-dedicated firearm owners is unrealistic and it is not understood why a limit should be placed on the amount of rounds a licensed individual may hold in his/her possession safely.

Shotgunners, .22 rifle sport-shooters, and other calibre sport-shooters and hunters, regularly use more than 200 rounds per instance (i.e. clay pigeon shooting, practical shooting, and small calibre target shooting).

Shotgunners regularly buy ammunition in quantities of up to 5,000 rounds as it makes financial sense (especially #7 shot which is used for clay pigeon shooting and for shooting doves). In addition shotgunners use different sizes of shot for different hunting situations determined by the type of gamebird being hunted (i.e. # 4 & # 5 for guinea fowl, and # 1 for spurwinged geese). If a shotgunner holds 250 rounds of #1 ammunition (that is the box sizes the rounds are sold in), then s/he cannot hold any other rounds (i.e. #4s) if s/he is not a dedicated hunter, which they do not have to become if they only have a shotgun, and for instance one rifle.

We contend that if a firearm owner is licensed s/he should be allowed to keep the number of rounds s/he can afford to keep safely stored – otherwise why licence the person or declare the person competent to own a firearm? We further contend that the absolute majority of firearm owners are responsible individuals, and that curtailing the number of rounds a person may hold safely, presents a situation where the accountability of the individual is not recognised.

## **21.4 Acknowledgement of Trainer's certificates for purposes of process**

The current pathetic delivery by SASSETA in respect of issuing certificates as proof of proficiency training, is seriously hampering the realistic implementation of the firearms licensing process. It is our contention that the "re-issue" of proficiency training certificates by SASSETA, at cost to firearm owners, is a mere "rubber stamp" for certificates already issued by accredited training providers who are perfectly competent to issue such certificates, as they are accredited to present such training.

We request that a system whereby the Registrar will accept the proficiency training certificates of accredited training providers as valid proof of training, be instituted through the Regulations, and that applicants be allowed to submit the SASSETA proficiency certificates once they have received them from their specific training provider.

SASSETA inspects accredited training providers twice per annum for quality. We believe that to be sufficient motivation for the Registrar to accept certificates issued by accredited training providers. No university certificate is subject to re-issue by a relevant SETA before it is recognised in practice. Why firearm owners should wait for SASSETA to confirm compliance with proficiency training criteria which they inspect, before the Registrar accepts that the applicant has complied with the requirements, is unclear.

## **21.5 Accredited Association's training modules as proof of dedicated status**

The fact that there should be an agreed upon criteria by way of which to award dedicated status in terms of firearm ownership, is supported.

We do, however, not see the realism or need for making such criteria part of the SAQA system. SAQA is about careers and formal training. Firearm ownership as in the case of hunters and sport-shooters is focused on participation in a cultural past time, sport or a hobby (*vrywillige deelname aan 'n liefhebberij*). The hunting and sport shooting fraternity also do not pay levies to the SETA system, and is, therefore, legally not required to be part of such a system as hunters and sport-shooters are not employers who have employees that have to be formally trained for a career oriented situation (hunters and sport-shooters are also not employees in this regard). Why they should then be forced by the Regulations of the FCA, and not the Act itself, to be part of the SAQA system in respect of dedicated status, is not understood.

All accredited associations (hunting and sport-shooting) have formal training programmes for their dedicated members. We submit that it should be proof enough for the Registrar that a member of such an association is adequately trained to the level of dedicated status, provided such training material has been recognised by the Registrar and that such training material has been accepted through a process of peer group evaluation by accredited hunters or sport-shooting associations, as conforming to a standard they all ascribe too.

### **21.6 Dedicated status denoted by firearm ownership**

Irrespective of the previous paragraph, we request that the distinctions for dedicated hunter and dedicated sport-shooter be replaced by the term, "**dedicated firearm owner**", as the FCA is surely not meant to regulate hunting or sport-shooting, but to, *inter alia*, regulate the possession and safe use of firearms.

In such an instance it should be a simple exercise for accredited associations to compile criteria against which all firearm owners can be measured for their dedicated status in terms of safe and responsible use of firearms.

Why knowledge of animal's spoor, for instance, should determine when a person can own more than 4 firearms is not clear, as these are the standards proposed in the yet to be accepted unit standard for dedicated hunting. This situation also leads to irregularities and we submit, even to double standards between awarding dedicated hunter and or dedicated sport-shooter status.

The perception exists, rightly or wrongly, that if one cannot, for instance, run between barrels while shooting at targets, one cannot become a dedicated sport-shooter. This excludes a large number of dedicated firearm owners who regularly participate in ordinary target shooting exercises on shooting ranges. If a person is too old to run and be active while participating in dedicated sport-shooting, or is just even not inclined to partake in such activities, s/he is disqualified, it seems, of being classified as dedicated sport-shooter. We submit this is a restrictive criteria for determining dedicated status, as the similar absurdities can be furnished in the instance for qualifying as a dedicated hunter.

One could also ask as to why the members of the SA Hunters and Game Management Association or of the Lowveld Hunters and Game Management Association who regularly have branch target shooting practice on the first and second Saturday of the month respectively, do not qualify automatically to be declared dedicated sport-shooters. They participate in a dedicated manner in monthly held target practice shooting, in order to better their hunting abilities (surely that is also sport-shooting). Why then can they only become dedicated hunters ? Just because their association did not apply for accreditation as sport-shooting associations too, or because they do not run around during practice ? It does not make sense at all !

***We contend that proven responsibility and accountability in firearm ownership should be the criteria for dedicated status.*** These are aspects that can be vouched for by accredited associations in terms of their members. Otherwise why are associations accredited ?

### **21.7 Formal acceptance of endorsements of applications by accredited associations**

By nature of accrediting associations, the Registrar should acknowledge the fact that such associations possess "pools" of highly knowledgeable and skilled persons who can take responsible and accountable decisions regarding the so-called stated need for a firearm.

We contend that the endorsements of accredited associations in support of the validity of the need of their member's stated need for a firearm, be recognised in the Regulations, and that the Registrar will

accept such endorsement as adequate and only necessary motivation for a member of an accredited association to apply for renewal of licence or for a new licence for a specific firearm.

A document which was negotiated with the Registrar to this effect, has been handed to the minister on 5 September 2005 by the Hunters Forum, upon which no reply has as yet been received.

### **21.8 Delegation of authority**

We request that authority for awarding new firearm licences be delegated to the Provincial level, and that the awarding of renewals be delegated to DFO-level, as this makes for a much shorter time in completion of the process of licensing of firearms. On these levels the officers have access to the same sets of data the Registrar in Pretoria has to.

### **21.9 Clear guidelines for successful application**

The one area in the implementation of the FCA which is a serious gray area is the lack of a clear set of guidelines against which applications are evaluated (not the stipulations of the Act or Regulations, but the content of the discretion the Registrar has in deciding applications). In any field of endeavour in this country there is a set of rules, that once you have complied with, you are perceived to have adequately completed the requirement. In the instance of awarding firearm licences it seems there are no clear guidelines as to what the specific and real requirements are against which evaluation panels evaluate applications. This is a serious shortcoming in the implementation of the FCA and leads to untold uncertainty, discontent, and rumour mongering. This shortcoming must please be addressed in the new Regulations if the FCA is to be sensibly implemented, as one would expect it to be among reasonable individuals and responsible firearm owners.

Thank you for affording the NSA the opportunity to comment on the proposed FCA amendments.

Yours Sincerely



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**Dr Herman Els**  
Executive chairman  
Permanent member of the Executive Council