

## **MEMORANDUM ON THE OBJECTS OF THE FIREARMS CONTROL AMENDMENT BILL, 2020**

### **1. BACKGROUND AND PURPOSE**

1.1 Following a Summit on Firearms that was held by the Portfolio Committee on Police, and as part of his comprehensive approach to the problem of the proliferation of firearms in South Africa, the then Minister of Police appointed a Firearms Committee to review existing legislation for the control of legal firearms. 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 of gun deaths as well as violent crimes. The Firearms Committee produced a report which contained a number of recommendations relating to the legislative review. These recommendations contributed to the Firearms Control Amendment Bill, 2020 ("the Bill").

1.2 The Bill seeks to amend the Firearms Control Act, 2000 (Act No. 60 of 2000) ("the Act"). The amendments respond to the overarching policy principles of non-proliferation of firearms and the strengthening of the processes relating to the applications for firearm and ammunition licences and the management of firearms and ammunition. In the process of putting into operation of the Firearms Control Amendment Act, 2006 (Act No. 28 of 2006), some deficiencies in the Act, had been noted, namely that some consequential amendments are required in order to align the control over muzzle loading firearms with the control over firearms. Muzzle loading firearms have now been included in the definition of "firearms". The

problems experienced by the Central Firearms Register in the timeous and proper consideration of applications for firearms and making decisions on such applications, the confusion on the proper interpretation of the provisions relating to the validity of competency certificates, the provisions relating to the issue of renewing competency certificates, the limitation on the number of firearms that may be issued to dedicated hunters and dedicated sports-shooters as well as the regulation of muzzle loading firearms are included in the amendments. In order to address the reduction of gun deaths and gun violence, firearm licences for self-defence purposes will not be permitted. Other amendments also include the designation of a Designated Firearms Officer at each police station, as far as is practicably possible, to improve the control over firearms in possession of the police and other Official Institutions and private security service providers.

1.3 The amendment also seeks to place a limit on the number of semi-automatic rifles and semi-automatic handguns that may be licenced to a dedicated-hunter or a dedicated sports-shooter.

1.4 In *SA Hunters A.O v Minister of Safety and Security Case No: 33656/09*, the South African Hunters Association sought an urgent interim order in the High Court to declare the firearm licences issued in terms of the Arms and Ammunition Act, 1969 to be lawful and valid pending the finalisation of the main application as to the constitutionality of item 1(1) of Schedule 1 to the Act.

1.5 The main application was against the commencement and implementation of item 1(1) of the Act, which provides for transitional provisions. Item (1)(1) to the Schedule provides that any licence which was issued in terms of the repealed Arms and Ammunition Act, 1969 (Act No. 75 of 1969) and which was valid immediately before the date of the Act, remains valid for a period of five years from the date on which the Act comes into operation, unless such licence is terminated, cancelled or surrendered in terms of the Act. In addition, firearm licence holders must within this period apply for new licences in terms of the Act, lawfully dispose of any firearm not lawfully possessed and any firearm not disposed of may be forfeited to the State.

1.6 In the main application the South African Hunters Association were to argue that the item 1(1) of the Act infringed the constitutional right to ownership (of a firearm); the right not to be prosecuted and imprisoned for the possession of firearms that were legally acquired in terms of the Arms and Ammunition Act, 1969; the right to lawful, reasonable and procedurally fair administrative action.

1.7 The SA Hunters Association maintained that the five-year period would expire before all the licence holders could apply and obtain licences and competency certificates due to backlogs in the South African Police Service ("the Service"), resulting in the applications not yet being processed and finalised in terms of the Act. Furthermore, the SA Hunters Association alleged that the State did not have resources to implement the administration necessary to finalise the renewal of firearm applications and new firearm applications. Some firearm licence applications had been declined. As a result of this situation many lawful licence holders would be

subject to criminal prosecution by virtue of not holding licences to possess their firearms in terms of the Act, and their firearms would be forfeited to the State.

1.8 The High Court in the South African Hunters Association case held that a prima facie case had been made in respect of the pending main application as to the absence of a justification for the limitations of the constitutional rights affected by the impugned transitional provisions. The respondent could not show any justifications for the limitations. Furthermore, the North Gauteng High Court held that the legislature should have taken into account the available administrative facilities and should not have designed a transitional arrangement which cannot be implemented by the officials of the respondent.

1.9 The North Gauteng High Court granted an interim order pending the finalisation of the main application as to the constitutionality of the impugned transitional provisions as contained in Schedule 1 to the Act. The court ordered that that firearm licenses which were issued in terms of the Arms and Ammunition Act, 1969 will be deemed to remain valid until the main application had been finalised.

1.10 Based on this judgment, the Bill seeks to propose amendments to give effect to rectify the anomalous transitional provisions contained in Schedule 1 to the Act.