



## FIREARMS CONTROL BRIEFING

### THE FIREARMS CONTROL ACT (NO 69 OF 2000): 101<sup>1</sup>

#### BACKGROUND: GUN POLICY IN SOUTH AFRICA SINCE 1994

The National Crime Prevention Strategy (NCPS) adopted in 1996, identified crimes committed with firearms as one of several priority crimes. The NCPS proposed a comprehensive strategy for firearms control which included establishing a policy committee to review national legislation; and forging regional links to combat illegal weapons trafficking (e.g. Operation Rachel with Mozambique). In 1997 the Minister for Safety and Security appointed the *Committee for the Investigation into a New Policy for the Control of Legal Firearms in South Africa* as well as the *Committee of Inquiry into the Central Firearms Register (CFR)* to investigate the role and function of the CFR.<sup>2</sup>

Both reports submitted to the Minister identified gaps and weaknesses in the then Arms and Ammunition Act (75 of 1969) and the existing operational system within CFR. Recommendations included the need for a comprehensive approach to address the misuse of firearms; improved systems to track illegal firearms trafficking; better accounting systems; and stricter controls over civilian gun ownership. A key recommendation of the Policy Committee was unambiguous in its intent:

*"to cut down on the number of firearms in the country and to protect South African citizens from the crime associated with both illegal and legal firearms."*<sup>3</sup>

Over the next two years government embarked on a comprehensive review of South Africa's firearms control regime, resulting in the publication of the Firearms Control Bill for public comment in January 2000. In October 2000 the Bill was passed by a majority in parliament and is known as the Firearms Control Act (60 of 2000).

#### BASELINE DATA

In response to the need for accurate data on the concentration and management of firearms in South Africa, including loss and theft as well as the impact of firearms-related injuries, the National Crime Prevention Centre commissioned the gathering of baseline data on firearm use and distribution. The publication, *Firearm Use and Distribution in South Africa*, played a central role in shaping key aspects of the Act such as limitations on the number of firearms owned; limiting the use of a handgun for self-defence to one; two-tier licensing and registration system; and licence renewals.<sup>4</sup> This publication reiterates government's concern that the easy availability of firearms contributes to the high level of violence and violent crime, and therefore one of the aims of strengthening South Africa's national gun laws is to reduce the proliferation of firearms.<sup>5</sup>

Further baseline data that assisted in the formulation of the law was the lack of compliance by gun owners to the relatively lax requirements of the Arms and Ammunition Act:

<sup>1</sup> Refer to Firearm Briefing 1 of 2015 on Global Norms and Standards to see how the FCA compares.

<sup>2</sup> Kirsten, A. 2008. *A nation without guns? The story of Gun Free South Africa*. UKZN Press.

<sup>3</sup> *Policy for the Control of Firearms in South Africa*. 2000. Pretoria: Department of Safety and Security. p.4.

<sup>4</sup> Chetty, R. (Ed). 2000. *Firearm Use and Distribution in South Africa*. Pretoria: National Secretariat for Safety and Security, National Crime Prevention Centre.

<sup>5</sup> Chetty, R. (Ed). 2000. *Firearm Use and Distribution in South Africa*. Pretoria: National Secretariat for Safety and Security, National Crime Prevention Centre. Foreword by Dr Bernie Fanaroff. p.7.



- A survey undertaken by the Institute for Security Studies (ISS) reported that the records at the CFR are 70% inaccurate, mainly because gun owners have failed to inform the CFR or the office of Home Affairs about their change of address.<sup>6</sup>
- In 16% of cases involving firearms, inaccuracies resulted because gun owners did not notify the CFR of the loss, theft or sale of a firearm. This was confirmed by the then Minister of Safety and Security, who reported the findings of a recent South African Police Service (SAPS) survey of 2,218 licence holders.<sup>7</sup>

By law, gun owners are required to inform the registrar of a change of address as well as any changes in the status of their firearm/s.

### KEY PROVISIONS OF THE FCA

The Firearms Control Act (2000) conforms to the Zimring standard of gun ownership by regulating who can own what weapon for which purpose. It includes the following key provisions:

- 1. Gun ownership is not a right but a privilege governed by law**  
South African law is similar to most other countries that regulate the possession of gun ownership, in that gun ownership is not a right but a privilege offered through the law which sets criteria for ownership.
- 2. Licence the person, Register the gun**  
Licensing the person and registering the gun is a central part of any registration system, as it records the details of a firearm, together with information about the person responsible for this weapon, so linking a firearm to an owner. The registration of guns also helps support law enforcement officials in their efforts to trace guns, investigate crime and support criminal prosecution. Licensing the person is important because it:
  - i. Holds gun owners responsible for their firearms;
  - ii. Decreases the criminal use of guns;
  - iii. Reduces the illicit trade in guns;
  - iv. Enhances police work; and
  - v. Minimises the danger to police.
- 3. Two-tier licensing system: establish competency; issue licence to possess to 'fit and proper' person**  
The principle underlying this provision in the Act is one of placing the onus of responsibility onto the firearm applicant to show that she/he is fit to own gun.
  - i. *Competency certificate*  
Competency certificates are very similar to the learner's licence required by those learning to drive a car. Like a learner's licence, people applying for a competency certificate in order to apply for a licence to possess a firearm, must meet certain requirements including: aged 21 years or older; not dependent on any intoxicating or narcotic substance; not convicted, whether in or outside South Africa, of an offence involving the use of a firearm or violence; and successfully completed the prescribed test on knowledge of the law. The competency certificate thus sets a minimum standard for owning a firearm. Only those meeting this standard can enter the system, and apply for a firearm licence.

<sup>6</sup> Survey on compliance with the provisions of the Arms and Ammunition Act. 1999. Institute for Security Studies. Pretoria: ISS.

<sup>7</sup> Minister of Safety and Security, S. Tshwete, 9 September 1999.



*ii. Firearm Licence: to give official permission*

Having obtained a competency certificate, the person wishing to own a firearm has to then apply for a firearm licence. A separate licence is required for each firearm a person wishes to own. A firearm licence documents the state's recognition that the person has been judged 'fit and proper' to own a firearm, so granting him/her permission to possess the firearm for which the licence applies.

#### **4. Renewals**

Under the Arms and Ammunition Act (1969), a licence to possess a firearm lasted for life, meaning that there were very limited checks and balances to ensure that existing gun owners remained equal to the responsibility of firearm ownership.

The system of renewals is an integral part of the licensing and registration system which makes provision for the legal gun owner to reaffirm his/her responsibility for the firearm registered in his/her name or be given an opportunity to explain why he or she should no longer be accountable for its whereabouts. Such explanations may include a lawful transfer, theft (supported by a police report) or voluntary surrender (supported by evidence).

Firearm licence renewal requires that genuine need for the continued ownership of the firearm must be proven again. Imposing a limited duration on a gun licence provides for the following:

- i. Regular confirmation that the licensed owner is still qualified to have a firearm;
- ii. An incentive for complying with licensing – this places responsibility on the licence holder to maintain 'fit and proper behaviour' since there is a risk the licence may be revoked;
- iii. An incentive for acquiring a new licence when the old licence expires.

Other benefits of a renewal system include enhancing police investigations; improving police officer safety; and reducing gun theft. A renewal system also helps to enforce the legal obligation to report lost or stolen firearms; which in turn allows the police to more fully understand this flow and be able to respond accordingly.

#### **5. Age Restriction**

Most countries prohibit the acquisition and ownership of guns by young people and minors. This can include restricting the types of firearm-related activities young people can engage in or the types of weapons they can possess. The international norm of not permitting ownership of a firearm until a person is 18 years of age (the age of majority in many countries). However there are some notable exceptions such as South Africa which does not permit gun ownership until the person is 21 years old (with some exceptions). Other countries which have a 21 year age restriction include Croatia, Egypt, Estonia, India, Lithuania, and Turkey. Countries such as Brazil and Uganda require a person to be 25 years of age.

#### **6. Firearm Free Zones (Section 140)**

Section 140 of the Firearms Control Act gives Minister of Police the power to declare (by notice in the Government Gazette) any premises or category of premises as a Firearm Free Zone (FFZ) in which no person may allow, store or carry a firearm. It is a criminal offence to contravene the FFZ status of a premise. Schedule 4 – Penalties of the Act lists the maximum period of imprisonment:

- For allowing a firearm or ammunition into an FFZ: Five years.
- For carrying a firearm or ammunition in an FFZ: Ten years.
- For storing a firearm or ammunition in an FFZ: Twenty-five years.

