

CL-AB.3

SA Gunowners' Association

We stand for responsible ownership of firearms



SA Geweereienaars-Assosiasie

Ons staan vir die verantwoordelike besit van vuurwapens

21 October 2009

By email <jmichaels@parliament.gov.za>

The Secretary, Mr J Michaels,
Portfolio Committee on Police
National Assembly,
Cape Town

Criminal Law (Forensic Procedures) Amendment Bill (B2-2009)

We wish to record that, in principle, the South African Gunowners' Association has no objections to laws and procedures that contribute to the State's efforts to combat crime.

We note with dismay that, despite being fully aware that the Bill's provisions could infringe no less than six sections of our Constitution, the drafters presented it for your approval on the basis that these infringements could be condoned under section 36 (the limitation clause) of the Constitution. We fear that Section 36 is habitually (mis)used for the convenience of promoters of 'difficult' legislation and request that you note our principled opposition to such practice.

We strongly recommend that all regulations drafted to give effect to this legislation be open to public debate and be subject to the close scrutiny of your committee and/or a joint police/justice committee so as to guard the constitutional rights of all the citizens of our country. Seeds sown in haste will grow into weeds which will threaten our liberty.

We opened by saying 'in principle' because we foresee problems with the implementation of the provisions of this Bill by state bodies/departments which already lack the knowledge, staff, equipment, systems and other resources to carry out efficiently their existing duties and responsibilities.

We also foresee that, unless and until the police members on the ground who have 'hands-on' responsibility for performing the procedures, are properly trained and have appropriate 'people skills', their enforcement of these amendments could further infringe citizens' constitutional rights and be a public relations disaster.

To make the meaning clear from the outset, we recommend that the defined term "speculative search" be replaced with "database search" or if absolutely necessary "speculative database search". The word "speculative" appears to be superfluous and can have negative connotations.

We applaud your Committee for insisting that the SAPS provide you with proper, quantified, implementation budgets and plans and trust that you will not deviate from this worthy (but frequently neglected) "look before you legislate" approach.

In June 2004, when we approached the Pretoria High Court to delay the implementation of the Firearms Control Act, No 60 of 2000 on the grounds that the SAPS was not properly geared up to do so, the Court rejected our application on the grounds that we could not see into the future.

The then Minister and the SAPS had convinced the Court that they were fully capable of, and completely ready to, implement the Firearms Control Act. This was patently untrue.

After spending many millions of Rands and man-hours, subsequent events proved the contrary as evidenced, inter alia, by recent judgements in the North Gauteng and Western Cape High Courts.

Then, as now, the SAPS were under social and political pressure to "do something about crime". Such pressures have led even senior policemen to fraudulently 'tamper with' crime statistics and in so doing defeat the ends of justice.

We believe that such pressures have also led, and will doubtless again lead, to the SAPS either wishfully or wilfully underestimating the extent of the burden additional legislation places upon their limited resources; or, alternatively, wilfully overestimating the practical benefits of such legislation and their capacity to produce such benefits in a cost-effective manner.

How far will they go to convince parliament that they are prepared and ready to implement this legislation? We do not know, but we ask that you do not accept glib assurances too readily.

Yours sincerely,

MJ Hood,
Spokesman & Legal Advisor

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