

**DANGEROUS WEAPONS BILL  
[B37 – 2012]**

**USE OF IMITATION FIREARMS FOR  
SPORTING ACTIVITIES**

**SUBMISSION  
to  
THE PORTFOLIO COMMITTEE ON POLICE  
and  
THE MINISTER OF POLICE**

**by the  
GAUTENG AIRSOFT CLUB**

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**1. INTRODUCTION**

The Dangerous Weapons Draft Bill, 2011 (herein the “draft Bill”) was initially published by the Department of Police in the Government Gazette no 34579 of 2 September 2011. Interested persons were invited at the time to submit written comments by 1 October 2011. At the time a written submission was made on behalf of the Gauteng Airsoft Club (GAC), and by the Chairman of the Gauteng Airsoft Club in his personal capacity.

A response was received from Ms Nicolette van Zyl-Gous, Researcher: Portfolio Committee on Police, by email dated 4 February 2013.

A revised Dangerous Weapons Bill [B37 – 2012] (herein referred to as the “revised Bill”) was published in the Government Gazette no 35815 of 23 October 2012, and has been tabled in Parliament. Interested parties have been invited to submit comments by 8 February 2013. Inasmuch as certain changes have been effected in the revised Bill, GAC has decided to make a further submission in which the information contained in the initial submission has been amplified, in order to address the potential problems still contained in the revised Bill.

The revised Bill is intended to repeal and replace the Dangerous Weapons Act no 71 of 1968 (South Africa), as well as the corresponding Acts of Transkei, Venda, Ciskei and Bophuthatswana. The replacement was prompted by the decision of the Constitutional Court in the matter of *S v Thunzi and S v Mlonzi* (Case CCT/81/09).

The underlying reasons for the revised Bill are sound and are supported, namely that the 1968 legislation was outdated in the context of the current national dispensation, and that appropriate legislation was essential in the light of the escalating levels of murders, robberies and other violent crimes where dangerous weapons play a significant part. It is also understood that replicas or imitations of firearms, which cannot easily be distinguished from real firearms, could present a potential risk. It is in connection with this category of prohibited dangerous weapons, ie replicas of real firearms which are themselves not inherently dangerous but which could be mistaken for dangerous weapons, that this submission is made.

It will be pointed out and explained that, although certain amendments were effected in the revised Bill, the current provisions in the revised Bill still entail a number of problem aspects – aspects which are expected to impact negatively on a legitimate and in itself not threatening or dangerous pastime. It will be submitted and indeed recommended that these aspects could be adjusted and dealt with in such a manner that the objectives of the legislation would still be achieved but without unnecessarily depriving law-abiding citizens from pursuing a legitimate sporting activity.

The submission is made by me behalf of the Gauteng Airsoft Club (hereinafter “GAC”) in my capacity as Chairman of the Club, and also in my personal capacity.

## **2. BACKGROUND INFORMATION**

As indicated above, I am the Chairman of a formally constituted airsoft club, the Gauteng Airsoft Club (GAC), one of many such clubs in South Africa. The activities of GAC (and other such clubs) are essentially sporting activities although use is made of replicas of firearms; these replicas, known as airsoft replicas or devices, are inherently not dangerous and are incapable of causing serious bodily harm. The airsoft sporting activities entail competition target shooting and mock battles between teams of members with airsoft replicas, so as to enhance the skill of members and to enjoy the outdoor environment of the country. Members have to be registered owners of airsoft replicas. The activities of GAC members extend to joint activities with other similar clubs, through our association with other clubs throughout the country, totalling more than 3000 club members and thus registered owners of airsoft replicas. (The membership of GAC and other clubs in Gauteng stands at more than 1500, with other clubs in KwaZulu-Natal, Eastern Cape, Free State and Western Cape comprising a similar number.) I can submit that, to the best of my knowledge, we have never heard of a person being killed or critically injured by an airsoft replica, nor has any member of our club or organisation ever been convicted for attempting to use an airsoft replica to conduct a crime. In this country it seems to

be far easier and cheaper to obtain a real firearm for use in violent crime than to acquire and make use of a non-lethal but fairly expensive airsoft gun to commit crime.

Airsoft is a wonderful sport, allowing the citizens of our wonderful land to participate in a competitive internationally recognised sport that promotes team work, respect, honour and responsible gun ownership. Most of our members handed in their real firearms in favour of pursuing this sport, as in no way could our airsoft replica weapons be stolen from us and then be used to kill or critically injure a fellow member of society, as regularly happens in the case of real firearms. There are indeed members of the SAPS and the SANDF who actively participate in the Airsoft sport.

I and the members of GAC would welcome any member of the South African Police to attend an Airsoft event to test the validity of the statements above. I am confident that any such member would leave the Club as a supporter of our sport.

For purposes of better management, we are in the process formalising membership of clubs within the SA Airsoft community, and aim to keep on record the ID documents of all members and suppliers, so as to be able to make them available if and when required.

For further information and consideration, the Constitution of GAC, the current safety rules, and the code of conduct are attached as Annexures A, B and C respectively.

### **3. PROVISIONS OF THE REVISED BILL**

#### **3.1 Section 1: Definitions**

Section 1, the definitions section, has been amended in the revised Bill. In the revised section 1 the following concepts are defined:

**“dangerous weapon”** means any object, other than a firearm, designed as a weapon and capable of producing death or seriously bodily harm;

**“firearm”** bears the same meaning as defined in section 1 of the Firearms Control Act, 2000 (Act no 60 of 2000), and includes a muzzle loading firearm or an airgun as defined in the said Act;

**“imitation firearm”** means an imitation firearm as defined in section 1 of the Firearms Control Act, and **“replica”** has a corresponding meaning.

In the Firearms Control Act, 2000 (Act no 60 of 2000) the concept “firearm” is defined to mean any –

- “(a) device manufactured or designed to propel a bullet or projectile through a barrel or cylinder by means of burning propellant, at a muzzle energy exceeding 8 joules (6 ft-lbs);
- (b) device manufactured or designed to discharge rim-fire, centre-fire or pin-fire ammunition;
- (c) device which is not at the time capable of discharging any bullet or projectile, but which can be readily altered to be a firearm within the meaning of paragraph (a) or (b);
- (d) device manufactured to discharge a bullet or any other projectile of a calibre of 5.6 mm (.22 calibre) or higher at a muzzle energy of more than 8 joules (6 ft-lbs), by means of compressed gas and not by means of burning propellant;
- (e) barrel, frame or receiver of a device referred to in paragraphs (a), (b), (c) or (d), but does not include any device contemplated in section 5.”

In the Firearms Control Act, 2000 the concept “imitation firearm” is defined to mean –

“anything that has the appearance of a firearm but is not capable of operating as such and cannot by superficial examination be identified as an imitation.”

The amended definition of “imitation firearm” and “replica” means that the express wording that we could previously rely on to differentiate from real firearms the airsoft guns that we use in GAC and in other similar clubs for our sporting activities, has been changed. The amended definition no longer expressly states that an airsoft gun of the kind that we use in GAC and in other similar clubs for our sporting activities, could have a distinguishing colour or feature to indicate that it is not a real firearm. This means that our airsoft guns would be removed from the ambit of the definition of an imitation firearm (and thus the ambit of the draft Bill) by ensuring that our guns are provided with a distinguishing colour (or another feature such as a plastic component) to distinguish them from a real firearm.

Although section 5 of the Firearms Control Act excludes devices such as airguns and paintball guns from the definition of a firearm, these devices (as well as airsoft guns) could still be seen as “imitation firearms”.

However, we interpret the amended definition of “imitation firearm” as still providing a basis on which airsoft gun of the kind that we use in GAC and in other similar clubs could be excluded

from the ambit of the new definition, by relying on the provision that it is not capable of operating as a firearm and can by superficial examination be identified as an imitation. In other words, we are interpreting the revised definition to conclude that our airsoft guns would not be regarded as “**imitation firearms**” or “**replicas**” for two reasons:

- (i) they are not capable of operating as a firearm;
- (ii) they could have a feature of appearance which would enable them, by superficial examination to be identified as an imitation, ie to be differentiated from a real firearm and thus to be identified as a harmless imitation.

The means that the position set out in our initial submission would still apply, namely that the application of a distinguishing feature of appearance, such as the application of a distinctive paint or colour to the flash hider, eg to paint it red, would solve our potential problem. Any unpainted weapons might then fall under the definition of a “**replica**” or “**imitation firearm**”, as now defined in the revised Bill, but any suitably differentiated (eg painted) airsoft guns would not fall within the definition.

Accordingly, although we agree that our airsoft guns are very similar in appearance to real firearms, and may be classified as replicas or imitations of firearms unless appropriately distinguished by way of superficial examination (eg by the application of a colour paint), we submit that our weapons do not in fact constitute real firearms or dangerous weapons, for the following reasons:

- Airsoft weapon housings are made of either plastic or aluminium alloy, and thus are unable to be modified to use a lethal pellet or cartridge. They are also unable to be used as clubs, the materials being so weak that the airsoft replica would break if used to strike at any hard object.
- Airsoft weapons have been manufactured for the sole purpose of recreation. The muzzle velocity combined with the calibre and makeup of the pellet results in the energy released by the weapon as being less than 1.5kj of energy; it clearly does not fall within the definition of a “**firearm**”. In layman’s terms, it is impossible to fatally injure or kill someone with an airsoft weapon. Even at point blank range, a pellet might only break the skin, but it is impossible for a pellet to enter the body, unlike the metal or lead pellets fired from ordinary air rifles.
- Airsoft guns can in no way be used for personal defence. They are unable to fire any form of lethal or disabling projectile, such as metal pellets used by ordinary air guns, or pepper balls available for paintball guns.

### 3.2 Section 2: Possession prohibited

Section 2(1) of the draft Bill provides that any person who is in possession inter alia of any replica or imitation of a firearm in circumstances which would raise a reasonable suspicion that he intends to use the replica or imitation firearm for an unlawful purpose, will be guilty of an offence and liable on conviction to a fine or imprisonment.

It is noted that the qualifying phrase which appeared in the initial section 2(1), namely “unless he or she can provide a reasonable explanation for his or her possession or the carrying” of the replica or imitation firearm, has been omitted from the revised section 2(1). We interpret this change as indicating that, inasmuch as information regarding the airsoft sporting activities may no longer be relevant, the distinctive and differentiating appearance of the airsoft devices will become even more relevant and important.

The problem that we see is that the amended definition of “**imitation firearm**” and “**replica**” as contained in the revised Bill no longer has an express reference to “any distinguishing colour or feature to indicate that it is not a real firearm”, as was contained in the first draft Bill. Members of airsoft clubs will now have to depend on the less explicit provision in the revised definition of “**imitation firearm**”, namely that the airsoft gun must “by superficial examination be identified as an imitation”. We trust that our proposal for a colour spray to be applied to airsoft guns will provide the means for a superficial examination to show that these guns are mere harmless imitations.

Although we are in agreement with the fact that airsoft guns, at first glance, may look like real firearms to the untrained eye, we have indicated above that they may be made easily distinctive, eg by the application of distinctive paint. This problem has been overcome in countries like the United States and Canada by spraying the front flash hider of an airsoft gun red. This at least is a compromise to keep the possession and use of airsoft guns lawful.

As citizens of South Africa we support the efforts of the South African Police to reduce the levels of violent crime. Therefore we support the revised Bill where it states that any person who behaves in a suspicious manner in suspicious circumstance, and who creates the appearance that he intends to use a replica firearm in an unlawful manner, must be prosecuted to the full extent of the law. However, we submit that the revised Bill should be applied, and thus framed, in such a manner to allow citizens of this country, who belong to recognised and legitimate Airsoft clubs and sporting bodies, and who treat their airsoft replicas in a responsible and lawful way, to continue to enjoy their sporting activities.

We believe that, if our interpretation of the possible application of the definition of “**replica**” or “**imitation firearm**” as set out above is correct, and if it will be recognised by the Police and other authorities that the application of a distinctive colour differentiation will identify airsoft weapons as non-lethal weapons and thus also specifically exclude them from the application of section 2(1), inasmuch as the colour differentiation would enable the Police or other authorities to identify, by superficial examination, airsoft weapons as being mere imitations of firearms and not lethal weapons, as contemplated in the revised section 2(1), that the members of legitimate Airsoft clubs would be less concerned.

In order to address our concern and so as to re-introduce the possibility of the distinctive differentiating feature of colour to be used, an appropriately worded provision could be included in the revised section 2(2), to state that a colour marking on an airsoft gun would be one of the factors to be taken into account.

### 3.3 Section 4: Regulation of gatherings

Section 2(5), which was contained in the initial draft Bill and which related to public gatherings, has been omitted from the revised Bill. In its place section 4 now makes section 8(4) of the Regulation of Gatherings Act, 1993 (Act no 205 of 1993) potentially applicable to gatherings also of Airsoft club members. It seems that this provision could make the practice of airsoft club members to meet at a registered paintball field or private residence, where defined safety rules are in fact enforced by the club, unlawful.

Although we have indicated above that the airsoft weapons used by club members are believed to fall outside the definition of a “**replica**” or “**imitation firearm**”, so that the provisions of section 4 may not be applicable to our legal gatherings, we nevertheless raise our concerns about this provision. We believe that any uncertainty in this regard would encroach upon our rights as citizens of South Africa, to enjoy the sport of airsoft shooting, which is currently enjoyed by all races and genders within South Africa. Furthermore, our games are held in a responsible manner so as protect both the players of the sport as well as spectators and all other members of the public.

In order to address our concerns, we recommend that a further reference to sporting activities be inserted into the qualifying paragraph of the revised section 8(4) to be inserted into the Regulations of Gatherings Act, in the following manner: after the words “during a gathering or demonstration, for cultural or religious purposes or historical enactments” insert the words “or a recognised sport activity”. Such a provision would allow the responsible officer to approve the possession of airsoft guns at our sporting events.

We would support a proposal for the bill to include a requirement that all persons who own airsoft replicas, must belong to a duly constituted club or organisation that promotes responsible replica ownership, and which adheres to a code of conduct that promotes public safety and remains within the confines of the law.

As stated before, that in the interests of public safety, a requirement should be stipulated that the flash hider or muzzle of the airsoft replica must be painted red, to enable easy identification.

#### 3.4 Prohibition of importation, manufacture, etc

Section 3 of the initial draft Bill gave the power to the Minister, by notice in the *Gazette*, to prohibit the import, manufacture, sale or supply of any object which is a replica or imitation of a firearm. This provision has been removed and is no longer in the revised Bill.

When we commented on the initial draft Bill, we indicated that we agreed that limitations on the import, manufacture and sale of replicas should be put in place and that such import, etc. should be regulated. The ability to acquire airsoft replicas and own them must include a requirement for the knowledge and the understanding of the responsibilities and obligations imposed by the law, namely in regard to the storing, carrying and the circumstances under which such replicas may be used. In the United Kingdom, where gun ownership is very strict, a person must belong to a recognised airgun club, to be able to purchase and own an airgun.

We strongly disagree with store owners that sell airsoft replicas to the public as “self-defence weapons” as firstly they are unsuitable for this purpose, and secondly such sales tactics place the legitimate sport of airsoft in a poor light. We also disagree with the current ability to buy airsoft replicas as “toys” from any street vender or flee market. Owning even a non-firing imitation, let alone an air rifle, entails a level of responsibility, which we as club members promote and enforce whenever we meet, by holding safety briefings and clarifying the rules of engagement at all our gatherings. We would encourage and support the government in its efforts to compel owners to belong to a recognised club or organisation that, like the Gauteng Airsoft Club, ensures that their members use their airsoft replicas in both a responsible and lawful manner.

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Tyron Wilde

Chairman: Gauteng Airsoft Club

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