

NAACCSA

NATIONAL ARMS AND AMMUNITION COLLECTORS CONFEDERATION OF SOUTH AFRICA

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4th February 2013

Ms Babalwa Mbengo
Secretary of the Portfolio Committee on Police
PO Box 15
Cape Town
8000

(By Email to bmbengo@parliament.gov.za)

Dear Ms Mbengo,

DANGEROUS WEAPONS BILL, 2012

1. Introduction

Following the extensive consultation process subsequent to the publication of the Draft Dangerous Weapons Bill in 2011 ("the Bill") it has come to our notice that a revised version of the Bill has been published and that invitations for public submissions have been published by the Portfolio Committee on Police. Although most of our concerns have been taken care of, we still have some concerns regarding the current Bill which we would like to bring to the Portfolio Committee's attention for consideration.

2. Background to NAACCSA

The National Arms and Ammunition Collectors Confederation of South Africa (NAACCSA) is the recognized umbrella organization of all Accredited Collector's Associations in terms of the Firearms Control Act (No. 60 of 2000).

As such NAACCSA supports and will continue to do so, all reasonable, practical and lawful measures to promote obedience to the Constitution and the law and thus to prevent and control crime, especially violent crime.

However, NAACCSA also has an obligation to promote the responsible and controlled collection, restoration and preservation of firearms and related artifacts, including edged weapons, many of which have played, and continue to play, an important role in our history, heritage and culture as a country and as a society.

It is against this background that we make the observations and proposals below.

3. General observations

Having examined the Bill in detail we believe that it still presents a few problems with regard to –

- (i) the definition of “dangerous weapon”;
- (ii) the definition of a “replica”; and
- (iii) the consistency, legality and workability of Section 2, sub-sections (1) and (2).

These concerns are set out in detail in paragraph 3 below, together with some suggestions as to how such concerns might be addressed.

3. NAACCSA Specific comments

(i) Definition of “Dangerous Weapon”

“Dangerous Weapon” means any object, other than a firearm, designed as a weapon and capable of producing death or seriously bodily harm.

The problem with this definition, although it does address some of the concerns raised in connection with the first draft, is that some ambiguity will still arise.

Many artefacts in this category have originally been designed both as weapons AND as tools or ornaments.

An axe, for example, may be regarded as a tool for chopping wood OR as a weapon, particularly where synonyms such as machete, hatchet or tomahawk come into play.

Similarly an unsharpened sword which has been manufactured for ceremonial or ornamental purposes out of ordinary steel is on visual examination indistinguishable from its full service counterpart.

To give some clarity from an interpretation and enforcement point of view, we believe the definition could meaningfully be refined to read –

“Dangerous Weapon” means any object, other than a firearm, designed or adapted for use as a weapon and capable of causing death or inflicting serious bodily harm”.

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(ii) Definition of 'Replica'

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

The wording of the definition of an 'Imitation Firearm' in the Firearms Control Act is -

'Imitation firearm' means 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 problem arises in that "Replica" now has two meanings, one in terms of the Dangerous Weapons Bill on the one hand and another in terms of the Firearms Control Act on the other

In the Dangerous Weapons Bill, a "Replica" is considered to be synonymous with an "Imitation Firearm" which is typically a non-working lookalike of a real firearm.

In the Firearms Control Act a "Replica" is considered to be a modern, fully working and licencable firearm which is a copy of a historic firearm which for various reasons may be otherwise unobtainable or unaffordable. A typical example would be the Colt 1873 Single Action Army revolver, of which a number of clones are currently produced by various manufacturers for collection, re-enactments, period shooting competitions, displays and the like.

Clearly the definition in either the Dangerous Weapons Bill or the Firearms Control Act will have to be changed.

In NAACCSA's opinion the most practical solution would be to change the definition and wording in the Firearms Control Act to read "Reproduction" rather than "Replica".

(iii) The consistency, legality and workability of Section 2, sub-sections (1) and (2).

Section 2 of the Bill currently reads as follows -

"2. (1) Any person who is in possession of—

(a) any dangerous weapon; or

(b) any firearm, replica or imitation firearm,

under circumstances which may raise a reasonable suspicion that the person intends to use the dangerous weapon, firearm, replica or imitation firearm for an unlawful purpose, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

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(2) In determining whether a person intends to use the dangerous weapon, firearm, replica or imitation firearm for unlawful purpose, all relevant factors including but not limited to the following, must be taken into account: etc.” (Our underlining)

In NAACCSA’s view the above section presents a number of concerns i.e.-

- (i) The wording is vague and does not present either the ordinary person or the law enforcer with a clear and unambiguous statement of what is expected of him or her.
- (ii) Sub-sections 2(1) and 2(2) are inconsistent in that sub-section (1) seeks to criminalise a “suspicion” while sub-section (2) seeks to criminalise an “intent”.
- (iii) The term “may raise a suspicion” places undue discretion in the hands of the law enforcer and is probably unconstitutional in terms of a person being deemed innocent until proven guilty.

In NAACCSA’s view sub-section 2(1) should therefore be drafted more definitively along the following lines, in which regard three options are proposed –

(a) The first option, and arguably the most appropriate in legal terms would be -

2(1) “Any person who is in possession of a dangerous weapon under circumstances that justify the reasonable and necessary inference that such person intends using such dangerous weapon for an unlawful purpose, is guilty of an offence ...”

The law enforcer will still have discretion but will have to be much more careful and circumspect since the inference will have to be drawn on all the circumstances and facts that the accused intended to use such weapon for an unlawful purpose.

(b) The second option is similar to the above, but in the possible interest of ease of understanding from the ordinary person’s point of view, “inference” is replaced with “conclusion” –

2(1) “Any person who is in possession of a dangerous weapon under circumstances that justify the reasonable conclusion that such person intends using such dangerous weapon for an unlawful purpose, is guilty of an offence ...”

(c) The third option seeks to incorporate the legal resilience of option (a), with the ease of understanding of option (b), and would read –

2(1) “Any person who is in possession of a dangerous weapon under circumstances that justify a conclusion beyond reasonable doubt that such person intends using such dangerous weapon for an unlawful purpose, is guilty of an offence ...”

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4. Conclusion

From the above it is hopefully clear that NAACCSA believes that while this revised Bill has gone a significant way to address earlier concerns, some issues should still be further addressed to promote consistency and transparency and to avoid ambiguity or confusion.

NAACCSA requests and would appreciate an opportunity to make a verbal submission to the Committee to explain its concerns and to clarify any questions that may arise from its submission.

Kind Regards,

Carvel Webb

(Chairman)