

**THE SOUTH AFRICAN HOME TEXTILE MANUFACTURERS
EMPLOYERS' ORGANISATION**

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**COMMITTEE SECRETARY
PORTFOLIO COMMITTEE ON POLICE**

**ATTENTION: Ms. Babalwa Mbengo
EMAIL : bmbengo@parliament.gov.za**

Dear Madam,

RE: SUBMISSIONS RE DANGEROUS WEAPONS BILL (B37 – 2012)

We refer to the notice in the Sunday Times dated 6 January 2013 inviting the public to make submissions in respect of the Dangerous Weapons Bill (37 – 2012) and advise that we have studied the Bill as well as the Memorandum on the Objects of the Bill and wish to make the following submissions in respect thereof.

We are an employer organisation who represent the Home Textile Sub Sector of the National Textile Bargaining Council (NTBC). The Home Textile Sub-Sector of the NTBC, represents some 113 employers and in excess 5500 employees who are covered by the scope of the Home Textiles Sub-Sector.

Our concern as an Employer Organisation is that we have had to deal with instances of violence in an employment context on numerous occasions. In respect of labour disputes, many of our member companies or companies falling under the Home Textiles Sub Sector, have been forced to launch numerous urgent applications to interdict employees and other persons who associate themselves with a strike/industrial action from carrying weapons, engaging in acts of violence and acts of intimidation.

The South African Home Textile Employers' Organisation is therefore concerned that certain aspects of the proposed Dangerous Weapons Bill (B37 – 2012) do not sufficiently address and ensure the safety/constitutional rights of employers, fellow employees, management, the public in general and property.

Attached, please find a copy of the submission made by Cowan-Harper Attorneys (Per Mr. R. Harper/Mr. N. Coetzer).

We, The South African Home Textile Employers' Organisation support and endorse the views expressed by Cowan-Harper Attorneys as detailed in the attached document.

We trust that our submission will be given careful consideration when finalising the Dangerous Weapons Bill.

Should you require clarity or wish to discuss our submission, please do not hesitate to contact the undersigned.

It would be appreciated if you would please confirm and acknowledge receipt of our submission.

Yours faithfully,

**THE SOUTH AFRICAN HOME TEXTILE
MANUFACTURERS EMPLOYERS' ORGANISATION**

S. H. Rubidge

S.H. RUBIDGE

CHAIRMAN

Ref. Hometex

cc: Hometex Employers

(Encl. 4 Pages)

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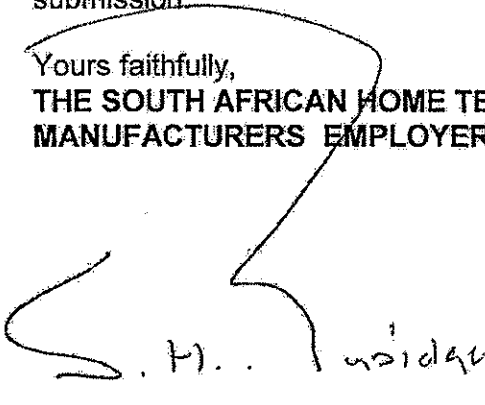
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A large, stylized handwritten signature in black ink, appearing to read 'S.H. Rubidge'. The signature is written in a cursive, somewhat abstract style with long, sweeping lines.

S.H. RUBIDGE
CHAIRMAN
Ref. Hometex

cc: Hometex Employers

(Encl. 4 Pages)

- 1.3 The reason for the inclusion of the words 'and/or' is to ensure that other objects which are carried by a person are covered by the definition. For instance, pangas and knobkerries are not designed as weapons, but are 'capable of producing death or serious bodily harm'.
- 1.4 Pangas, knobkerries and other objects such as cricket or baseball bats which are not designed as weapons are routinely carried by participants in marches and industrial action to intimidate and/or assault persons and damage property. Accordingly the definition should be extended as suggested.

2. Prohibition of dangerous weapons, firearms and imitation firearms

- 2.1 We are in agreement with the prohibition contained in section 2(1). We however suggest that a provision be inserted dealing with the misconduct of striking employees who routinely carry sticks, assegais, axes and other objects as weapons not only to further the objectives of the strike by intimidating employers but also to intimidate non-striking employees. On several occasions, and increasingly during 2012, we have encountered several acts of violence and vandalism perpetrated by employees who wielded 'dangerous weapons' as defined in the Bill.
- 2.2 We submit that South Africa's constitutional democracy permits employees to strike in support of their demands in respect of matters of mutual interest. Employees are therefore permitted to strike and should exercise that right responsibly and in accordance with the Labour Relations Act 66 of 1995, as amended ("the LRA"). While the Constitution protects the right of employees to strike, strikes should be peaceful and should not infringe upon the rights and/or safety of others.
- 2.3 We suggest therefore that the Bill should incorporate a special provision detailing specifically that employees engaged in a strike, as defined in section 213 of the LRA, are prohibited from being in possession of any dangerous weapon, firearm or imitation firearm.
- 2.4 In other words, we suggest that a specific offence be created for being in possession of a dangerous weapon, firearm or imitation firearm while participating in a strike or a march. Such a provision would ensure that strikes are free of any dangerous weapons, firearms or imitation firearms and would enable the SAPS to intervene in strikes to positively deal with those employees who are in possession of such objects in order to ensure that they comply with the law. In this way, violence during strike actions can be minimized and strikes may become more peaceful in the future.

- 2.5 We also suggest that in the event that if during a protected strike the participants in that strike are in possession of any dangerous weapon, firearm or imitation firearm, the strike should lose its protected status. Accordingly the strike will then be unprotected. Support for this contention can be found in the case of *Tsogo Sun Casinos (Pty) Ltd t/a Montecasino v Future of SA Workers Union & Others* (2012) 33 ILJ 998 (LC), where the Honourable van Niekerk J held as follows:-

"[13] This court will always intervene to protect both the right to strike, and the right to peaceful picketing. This is an integral part of the court's mandate, conferred by the Constitution and the LRA. But the exercise of the right to strike is sullied and ultimately eclipsed when those who purport to exercise it engage in acts of gratuitous violence in order to achieve their ends. When the tyranny of the mob displaces the peaceful exercise of economic pressure as the means to the end of the resolution of a labour dispute, one must question whether a strike continues to serve its purpose and thus whether it continues to enjoy protected status."

- 2.6 The above case is also discussed by Professor Alan Rycroft in his article 'Can a Protected Strike Lose its Status?' (2012) 33 ILJ 821.
- 2.7 We are in agreement with the criminal sanction of a fine or a period of imprisonment not exceeding 3 years. We suggest that this sanction should also operate in respect of the amendment proposed by us.

3. Amendment of the Regulation of Gatherings Act, 1993

- 3.1 We are in agreement with the proposed amendment to section 8(4) of the Regulation of Gatherings Act. This amendment is in line with the amendment suggested by us in the paragraphs above.
- 3.2 As pointed out above, we are of the view that the Bill should also address the issue of strikes, since there appears to be no reasonable or rational basis for only making the Bill applicable to 'gatherings' as defined in the Regulation of Gatherings Act. In any event, some of the most violent acts have been perpetrated by strikers in recent months and accordingly measures should be put in place to prevent such violence from occurring during industrial action in the future.
- 3.3 Furthermore, it is incongruous that in respect of similar activities, namely protests in terms of the Regulation of Gatherings Act and industrial action and

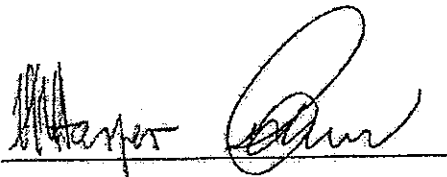
protests in terms of the Labour Relations Act 66 of 1995, as amended ("the LRA"), the Bill regulates the one area but not the other area of activity. The Bill therefore makes an arbitrary and irrational distinction in this regard.

- 3.4 We also propose that a penalty be inserted into section 12 in order to sanction contravention of the Regulation of Gatherings Act. The penalty should also be a fine or a maximum period of imprisonment of up to 3 years.

If for policy and process reasons the carrying of dangerous weapons in an industrial relations context cannot be dealt with in this Bill, we suggest that this letter be referred to the Ministers of Labour and Justice and Constitutional Development in order to propose that they should consider incorporating similar amendments into the LRA.

Should you wish us to make oral representations on any of our proposals dealt with herein, please contact us.

Yours faithfully

The image shows two handwritten signatures in black ink. The signature on the left is 'R Harper' and the signature on the right is 'N Coetzer'. Both signatures are written in a cursive style and are positioned above a horizontal line.

COWAN – HARPER ATTORNEYS

Per: Mr R Harper / Mr N Coetzer