



THE DANGEROUS WEAPONS ACT, 2013 (ACT NO. 15 OF 2013)



PUBLIC ORDER POLICING CONFERENCE
BURGERSPARK HOTEL
30 JANUARY 2014

BACKGROUND

- The Dangerous Weapons Act, 2013 was enacted following the decision by the Constitutional Court in S v THUNZI and S v MALONZI that the Dangerous Weapons Act must be rationalized.
- This decision resulted in the repeal of the Dangerous Weapons Act, 1968 (Act No. 71 of 1968) as well as the Dangerous Weapons Acts which were still in force in the territories of the erstwhile Republics of Transkei, Ciskei, Venda and Bophuthatswana.

BACKGROUND

- As a result, the possession of Dangerous Weapons is, from 2 January 2014 regulated by a single piece of legislation, namely the Dangerous Weapons Act, 2013, which is applicable to the entire territory of the Republic of South Africa



OVERVIEW OF THE ACT

- In essence the provisions of the Dangerous Weapons Act, 2013 comprise three broad categories, namely
 - A prohibition on the possession of dangerous weapons
 - An amendment to the provisions of the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993)
 - An amendment to the provisions of the Firearms Control Act, 2000 Act No. 60 of 2000

PROHIBITION IN TERMS OF THE DANGEROUS WEAPONS ACT, 2013

What is a dangerous weapon? Section 1 defines a dangerous weapon as-

“ ..any object, other than a firearm, capable of causing death or inflicting serious bodily harm, if it were used for an unlawful purpose”.

PROHIBITION IN TERMS OF THE DANGEROUS WEAPONS ACT, 2013

Why is a firearm is excluded from the definition?

The possession of a firearm with the intention to commit an offence is already prohibited by a similar provision in terms of section 120(10) of the Firearms Control Act.

PROHIBITION IN TERMS OF THE DANGEROUS WEAPONS ACT, 2013

- How does one assess whether an object is a dangerous weapon or not?

**Is the object is capable of causing
death or serious bodily harm if used for
an unlawful purpose
(eg. to commit an assault)**

PROHIBITION IN TERMS OF THE DANGEROUS WEAPONS ACT, 2013

- What is prohibited by section 3(1)?

“Any person who is in possession of any dangerous weapon under circumstances which may raise a reasonable suspicion that the person intends to use the dangerous weapon for an unlawful purpose, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding three years”.

PROHIBITION IN TERMS OF THE DANGEROUS WEAPONS ACT, 2013

It is not the mere possession of a dangerous weapon which constitutes an offence, but possession together with a reasonable suspicion that the person intends to use it for an unlawful purpose (to commit an offence).

PROHIBITION IN TERMS OF THE DANGEROUS WEAPONS ACT, 2013

“Reasonable suspicion” as interpreted by our courts requires an objective approach. *Manase v Minister of Safety and Security and another*, 2003 (1) SA 567(CK)

- the suspicion must be based on “solid grounds”**
- the person forming the suspicion must “analyse and assess the quality of the information at his disposal critically and he will not accept it lightly or without checking it where it can be checked**
- It is only after an examination of this kind that he will allow himself to entertain such a suspicion which will justify an arrest”.**

PROHIBITION IN TERMS OF THE DANGEROUS WEAPONS ACT, 2013

Section 3(2): All factors must be taken into account in determining the relevant intention-

- **The time and place where the person is found;**
- **The behaviour of the person (eg threats/ intimidatory behaviour);**
- **Manner in which the object is carried/displayed;**
- **Was possession in the context of drug dealing, gang association, organised crime or other criminal activity; or**
- **Any other relevant details including any explanation the person may wish to tender for his possession. (There is however no obligation on the person to provide an explanation and is voluntary)**

PROHIBITION IN TERMS OF THE DANGEROUS WEAPONS ACT, 2013

Section 2: The prohibition does not apply to the following activities-

- **Possession in pursuit of any lawful employment, duty or activity;**
- **During participation in any lawful religious, cultural, , sports recreational or entertainment activities; and**
- **The legitimate collection, display or exhibition of weapons.**

AMENDMENT OF THE REGULATION OF GATHERINGS ACT

In order to align the above Act with the provisions of section 17 of the Constitution, which provides for the right to assemble, demonstrate , picket and present petitions “ peacefully and unarmed ”, section 8(4) has been amended

AMENDMENT OF THE REGULATION OF GATHERINGS ACT

“No participant at a gathering or demonstration may have in his or her possession-

- (a) Any airgun, firearm, imitation firearm or any muzzle loading firearm, as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000), or any object which resembles a firearm and that is likely to be mistaken for a real firearm; or**
- (b) Any dangerous weapon, as defined in the Dangerous weapons Act, 2013 and the convener and marshals, if any, shall take all reasonable steps to ensure that this section is complied with”**

AMENDMENT OF THE REGULATION OF GATHERINGS ACT

Section 8(4) of this Act differs from the provisions of section 3(1) of the Dangerous Weapons Act, 2013, in that the mere possession of a firearm or dangerous weapon during a demonstration or gathering is sufficient to constitute an offence. A reasonable suspicion that a person intends to use it for an unlawful purpose does not have to be formed.

AMENDMENT OF THE REGULATION OF GATHERINGS ACT

**The prohibition relates to a “participant”
at a gathering or demonstration and does
not relate to police officers or security
service providers in pursuit of their
lawful duties and obligations in terms of
their employment.**

AMENDMENT OF THE REGULATION OF GATHERINGS ACT

- **Operational decision making remains unaffected by this new provision, and it must not be construed as requiring members to disarm armed participants or to arrest such persons where the circumstances dictate otherwise.**
- **If circumstances are such that the disarming of participants or arrest of the perpetrators could lead to violence, photographs/ video footage should rather be used to identify and prosecute the offenders at a later stage.**

AMENDMENT OF THE REGULATION OF GATHERINGS ACT

It must be noted that section 8(4) places an obligation on the convenor and marshals to take all reasonable steps to ensure that participants at a gathering are not armed. With this in mind it is advisable to remind the convenor and marshals at the section 4 meeting of this obligation and the fact that they can be held accountable should they not do so.

AMENDMENT OF THE FIREARMS CONTROL ACT, 2000

Section 120(10) (b) of the Firearms Control Act, is similar to the provisions of section 3(1) of the Dangerous Weapons Act, and provides that it is an offence to -

Be in possession of a firearm, airgun, deactivated firearm, muzzle loading firearm or imitation firearm with the intent to commit an offence or to use the firearm, airgun, deactivated firearm, muzzle loading firearm or imitation firearm to resist arrest or to prevent the arrest of another person”.

AMENDMENT OF THE FIREARMS CONTROL ACT, 2000

The Act is further amended by the Dangerous Weapons Act 2013 which inserts two new subsections, namely (10A) and (10B) which provide for the factors which are to be taken into account when determining a person's intention and the activities to which the prohibition does not apply. The provisions are identical to the provisions contained in sections 2 and 3(2) of the Dangerous Weapons Act, 2013.

SUMMARY

It is important to distinguish between the legislative frameworks for the above possession offences -

- **Possession within the context of a gathering or demonstration is regulated by section 8(4) of the Regulation of Gatherings Act through which mere possession of a firearm (and related objects) and/or dangerous weapon (as defined in the Dangerous Weapons Act by a participant constitutes an offence.**

SUMMARY

- Possession outside the context of a gathering or demonstration is regulated by the provisions of either-
- **Section 3(1) of the Dangerous Weapons Act, 2013 in the case of all objects, other than firearms, which may cause death or serious bodily harm if used for an unlawful purpose; or**
- **Section 120(10) of the Firearms Control Act, 2000, in the case of firearms and related objects.**

SUMMARY

Both the relevant Dangerous Weapons Act and the Firearms Control Act require-

- **proof of possession; AND**
- **Proof of an intention to use the relevant object for an unlawful purpose/ commission of an offence.**

CONTACT

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