The Office of the Director
Private Security Industry Regulatory Authority
Eco Glades 2 Office Park, Block B, 420 Withc-Hazel Avenue
Highveld Ext 70, Centurion, 0157
By Hand and Per Email: regulations@psira.co.za

SUBMISSIONS BY THE SOUTH AFRICAN GUNOWNERS' ASSOCIATION (SAGA) ON THE PROPOSED AMENDMENTS TO THE PRIVATE SECURITY INDUSTRY REGULATION ACT, 2001 (ACT NO 56 OF 2001) DRAFT AMENDMENT TO THE PRIVATE SECURITY INDUSTRY REGULATIONS PUBLISHED ON THE 28 March 2025

I refer to the above matter and advise that I am the Chairperson of the South African Gunowners' Association (SAGA), one of the oldest firearm rights organisations in South Africa. SAGA has been representing and defending the rights and interests of lawful firearm owners for more than 40 years.

On behalf SAGA, I address these submissions on the draft amendments to the Regulations to the Director on behalf of our members. Besides thousands of individual members SAGA has approximately 100 corporate members, and many of these corporate members are Private Security Companies.

SAGA places on record that the time afforded for comment on these amendments was grossly inadequate, undermining the possibility of meaningful public engagement. We reject the draft amendments in their entirety and object to both their substance and process.

None-the-less, in the inadequate time allocated to make submissions to the draft amendments, please find below SAGA's key objections and recommendations, as well as a Schedule of Objections which must be read in conjunction with this document.

Should you wish to clarify or further interrogate any aspect of our submission, our office remains available to discuss same in further detail.

Yours faithfully

DAMIAN ENSLIN

Chairperson
South African Gunowners' Association
Saga@saga.co.org | ☎ 031 562 9951 | www.saga.org.za

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1. INTRODUCTION

1.1. SAGA's objections are both legal and practical. The proposed regulations are vague, irrational, and likely unconstitutional. They reflect a fundamental misunderstanding of firearm usage in the security industry and impose unrealistic, punitive restrictions on lawful actors.

1.2. There are numerous serious and debilitating flaws in these draft amendments. They will significantly increase the administrative burden and cost on private security providers and severely curtail their ability to render professional and comprehensive services to their clients.

1.3. With over 580 000 security officers employed serving millions of clients, the industry is a cornerstone of South Africa's safety and security, and these amendments threaten to destabilise it entirely.

1.4. It is submitted that the draft amendments to the Regulations do not seek to regulate the security industry, contrary to the assertions made in media reports, but are instead designed to restrict the use of firearms by the security industry. This is impermissible, as the Regulator is created to ensure that security companies act in accordance with the law, not dictate or prescribe circumstances in which firearms may or may not be utilised.

1.5. This is properly enforced in terms of the Firearms Control Act 60 of 2000 ("FCA") and its Regulations, and there are sufficient enforcement provisions in applicable legislation to achieve any regulatory objectives that are sought to be introduced in these regulations. These draft amendments to the Regulations are thus irrational and fall to be rejected in their entirety.

1.6. It also appears that the Regulators at PSIRA are not aware of the law as Mr. Chauke the CEO of PSIRA has on a number of occasions, on national television, placed on record that the rationale behind these draft amendments to the Regulations is to curb indiscriminate shooting at public places in the air such as at cemeteries. The Regulators should read the FCA and specifically Section 120 which creates numerous offences with respect to the handling and / or discharging of a firearm/s.

1.7. There is thus existing law in the FCA and its Regulations which should be utilised to enforce the law against those that break the law. Creating more law or Regulations is not the answer – effective and adequate policing is required of the existing legislation.

1.8. In SAGA's view the draft Regulations amount to overreach, are not viable solutions in an industry that is already over-regulated, which now faces micromanagement that punishes legitimate entities instead of targeting criminals exploiting SAPS/PSIRA corruption.

1.9. There is increasing concern among our members that these regulations are a backdoor attempt to implement gun control outside of parliamentary oversight. The nature and tone of these amendments suggest a political agenda to disarm compliant citizens and the industries that support them.

2. LACK OF STAKEHOLDER ENGAGEMENT

2.1. Neither SAGA nor any of its corporate members that are part of the Private Security Industry have been engaged, nor has the industry in general or as a whole been engaged, nor have any of the related industries been engaged, prior to the gazetting of these draft amendments to the Regulations.

2.2. There has been no targeted engagement with key stakeholders such as the security industry associations, labour organisations, educational institutions, religious bodies, insurance companies, owners of commercial and large residential estates, or clients of security service providers.

2.3. The public consultation process appears to have been limited to publication in the Government Gazette—a medium that is not readily accessible to many affected individuals, particularly smaller firms or community-based operators. The window allowed for public comment is narrow and does not provide sufficient time or support for stakeholders to organise meaningful responses.

2.4. There also appears to be large portions of the private security industry and of the general public that are not even aware of the draft amendments and the draft amendments were published just before April, which must be one of the months with the most holidays, as a result of which many persons who may have wished to comment, being unable to do so.

2.5. These amendments were gazetted with no explanatory memorandum, consultation paper, or public hearings. As a result, many affected stakeholders were denied the opportunity to provide input. We therefore object not only to the substance of the Regulations, but also to the flawed and exclusionary process followed in their promulgation.

3. ECONOMIC OUTCOME

3.1. SAGA believes that no prior investigations nor studies have been conducted prior to the gazetting of these Regulations. If passed, these changes could collapse firms, cut jobs, and leave society less secure, harming a vital sector.

3.2. The ripple effect of these Regulations will not only cripple or destroy the private security industry; it will lead to a great many job losses throughout the industry, for instance: gunsmiths, dealers in firearms and security-related products like armoured vehicles, cash in transit operations, importers and a host of businesses reliant on servicing the whole security industry.

3.3. By stripping private security officers of lawful means of protection, the state may find itself increasingly exposed to civil litigation. If security providers are no longer equipped to protect life or property, and SAPS is unable to fill that gap, the state's failure to act will result in constitutional and delictual liability for damages.

3.4. South Africa's private security industry supports thousands of businesses involved in training, equipment supply, compliance, and operational logistics. These regulations threaten to destabilise this sector by imposing disproportionate compliance burdens, including costly requalification processes, excessive equipment restrictions, and onerous administrative procedures. Smaller security firms—many of which operate in underserved communities—may be forced to shut down or retrench staff, leading to widespread job losses and a reduction in essential safety services. This not only exacerbates unemployment but undermines local economies that rely on these companies for protection and stability.

3.5. At a broader level, the reduction in private security coverage will place greater pressure on SAPS and public healthcare systems, as violent crime, property damage, and civil unrest increase. Businesses, schools, and neighbourhoods that can no longer access adequate security may face rising insurance premiums, increased operational costs, and in some cases, closure or relocation. The state may also face growing exposure to civil liability claims for its failure to protect citizens—claims which will ultimately be borne by the public purse. In short, the proposed regulations risk collapsing one of the few functioning public-private safety partnerships in the country, with serious economic consequences not only for the industry but for national stability and development.

4. SAFETY AND SECURITY

4.1. SAGA submits that the safety and security of all South Africans is at stake, in the event that these Regulations become law. South Africans who rely on private security would be severely affected, as we can no longer rely on the South African Police Service (SAPS) - they are under-resourced and are insufficient in numbers on the ground to combat crime on their own. Further, SAPS rely substantially on the Private Security Industry to assist with and fill the void in combating crime.

4.2. In the event that the Regulations do become law, many ordinary citizens would be without protection and would be at the mercy of criminals, and ordinary citizens would become the victims of these irrational, impractical, unrealistic and destructive regulations.

4.3. The Regulations irrationally punish those who comply with existing laws while failing to address rogue actors who disregard the law entirely. This reflects a misguided regulatory approach that burdens lawful operators with red tape, while criminals operate outside the scope of enforcement.

4.4. The SAPS have proved time and time again that they are unable to protect the citizens of this country as clearly provided for in the Constitution. This is not something that can be solved overnight and will require a political will to completely overhaul and restructure the entire Service to be able to serve and protect the citizens of South Africa.

4.5. It is no secret that SAPS is already unable to fulfil its constitutional mandate under Section 205. Should private security providers be hamstrung by these regulations, SAPS will be further overwhelmed. These amendments, by crippling private security capacity, will make it impossible for SAPS to cope with the crime crisis alone, leaving communities exposed.

4.6. Due to resource constraints, capacity challenges, and operational backlogs, SAPS frequently depends on the extensive private security industry to supplement its presence, particularly in residential, commercial, and high-risk areas. Private security companies perform essential public safety functions, often responding to threats, protecting infrastructure, and assisting in emergency incidents where SAPS is absent or delayed. This informal yet crucial relationship has become foundational to the safety of many South Africans.

4.7. If the proposed regulations significantly restrict the operational capabilities of security providers—particularly their lawful use of firearms and defensive tools—it will severely impair this ecosystem of shared responsibility. The result will not be an increase in public safety, but a security vacuum that neither SAPS nor other state organs are in a position to fill. Undermining private security in this way is likely to exacerbate crime rates, reduce public confidence in law enforcement, and expose both individuals and communities to greater harm.

5. ADMINISTRATIVE LAW CONSIDERATIONS UNDER THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT 3 OF 2000 ("PAJA")

5.1. Whether the Promulgation of the Proposed Regulations is Reviewable under PAJA

5.1.1. It is evident that the decision by the Minister of Police to promulgate regulations in terms of powers conferred by the PSIRA Act constitutes an exercise of public power by an organ of state under an empowering provision. Moreover, these regulations will adversely affect the rights and interests of private security providers, their employees, and clients by placing substantive limitations on operational conduct, thus having a direct, external legal effect.

5.1.2. The central issue is whether regulation-making amounts to administrative action for the purposes of PAJA. While the Constitutional Court in *New Clicks* was divided on this point, the Supreme Court of Appeal in *Esau* and *City of Tshwane* has adopted the position that regulation-making of this nature constitutes administrative action and is accordingly reviewable under PAJA. Summarising the position of Chaskalson CJ in *New Clicks*, the making of regulations constitutes administrative action as it involves the exercise of a public power to give practical effect to legislative objectives, rather than policy formulation *per se*.

5.2. **Whether the Regulations are Lawful (Section 6(2)(a) of PAJA)**

5.2.1. Section 33(1) of the Constitution guarantees the right to lawful, reasonable, and procedurally fair administrative action. In accordance with *Fedsure*, an administrator may not exercise powers beyond those lawfully conferred upon them. Any action must align with the purpose, scope, and objectives of the enabling legislation—in this case, the PSIRA Act.

5.2.2. The proposed regulations appear to exceed the purpose of the enabling Act by imposing strict limitations on the issuance and use of firearms by private security personnel. These limitations effectively prohibit or severely restrict the possession of firearms outside of limited high-risk functions. The PSIRA does not confer the power to substantively regulate firearms control, which is a function expressly assigned to the Firearms Control Act 60 of 2000 and administered by SAPS. Accordingly, these firearm-related provisions go beyond what is contemplated in PSIRA and fall outside the Minister's mandate.

5.2.3. In addition to exceeding the scope of the Act, several provisions in the proposed regulations duplicate or encroach upon existing obligations found in the Firearms Control Act. These include requirements related to firearm storage, record-keeping, and reporting. PSIRA lacks the legislative competence to override or replicate the national firearm regulatory framework, particularly where such duplication risks creating conflicting or confusing obligations for license holders.

5.2.4. Furthermore, the regulations are drafted using vague and ambiguous language, which undermines legal clarity and thereby the lawfulness of the provisions. Regulation 13A (10), for instance, limits firearm issuance to a narrow list of specific functions such as cash-in-transit or armed response and explicitly excludes general guarding—even where the presence of firearms is operationally necessary. Additional clauses impose firearm control measures without providing clear definitions, exemptions, or avenues for administrative appeal. Taken together, these features render the regulations *ultra vires* and legally deficient.

5.3. **Whether the Regulations are Reasonable (Section 6(2)(h) of PAJA)**

5.3.1. The constitutional standard of reasonableness, as articulated in *Bato Star* and *Affordable Medicines*, requires a proportional relationship between the means adopted and the end sought. Although courts approach this standard with deference, they are obliged to intervene where administrative action is irrational, arbitrary, or imposes an unjustifiable burden on affected persons.

5.3.2. The proposed regulations exhibit a degree of rigidity and under-inclusiveness that renders them unreasonable in their design and application. They impose blanket restrictions that do not account for the diversity of legitimate, context-specific needs within the industry. There is no provision for exceptions based on contextual risk assessments—for example, where security personnel are assigned to protect vulnerable institutions such as schools, clinics, or religious facilities in high-risk environments. The regulations also do not empower the Regulator or licensees with any discretionary capacity to address site-specific threats or contractual obligations that necessitate armed presence.

5.3.3. In addition, the regulations are published without an accompanying explanatory memorandum or supporting empirical research. There is no explanation as to how the list of permitted firearm-related services in Regulation 13A (10) was developed, nor is there any evidence justifying the exclusion of other equally essential services. This lack of transparency contributes to a sense of arbitrary decision-making and undermines confidence in the regulatory process.

5.3.4. The consequences of this regulatory design are severe. In high-crime areas where armed private security is indispensable, the regulations may directly compromise public safety. They may also prevent security companies from fulfilling lawful contractual obligations, rendering existing agreements unenforceable and service delivery unworkable. For these reasons, the proposed regulations fail to meet the standard of reasonableness.

5.4. **Whether the Regulations Comply with Procedural Fairness (Section 4 of PAJA)**

5.4.1. Given the nature and scope of the proposed regulations, the provisions of section 4(1) of PAJA are triggered. This section requires procedurally fair administrative action in instances where members of the public are materially and adversely affected by a decision. Procedural fairness in this context entails taking active and appropriate steps to inform affected persons of the contemplated regulations and providing them with a meaningful opportunity to participate in the process.

5.4.2. In the present case, there is no indication that a regulatory impact assessment, explanatory memorandum, or policy rationale was published to guide or inform public input. Furthermore, there is no evidence of targeted engagement with key stakeholders such as security industry associations, labour organisations, educational institutions, religious bodies, or clients of security service providers.

5.4.3. The public consultation process appears to have been limited to publication in the Government Gazette—a medium that is not readily accessible to many affected individuals, particularly smaller firms or community-based operators. The window allowed for public comment was narrow and did not provide sufficient time or support for stakeholders to organise meaningful responses.

5.4.4. Our courts have repeatedly made it clear that procedural fairness cannot be reduced to a perfunctory invitation to comment. In *Joseph*, *Esau*, and *Doctors for Life*, the Constitutional Court emphasised that public engagement must be substantive and adapted to the interests at stake. The livelihoods of hundreds of thousands of private security officers, the contractual arrangements of clients, and the safety of the public all stand to be affected. The failure to consult meaningfully with those who would bear the brunt of these regulations renders the process procedurally unfair and vulnerable to review.

5.4.5. The absence of proactive engagement with these stakeholders violates PAJA Section 4 and undermines the legitimacy of the draft regulations. Stakeholder engagement is not a nicety – Section 33 of the Constitution places an obligation on the State to engage genuinely with the relevant stakeholders that would be most affected by the promulgation of these regulations. Affected parties would have strong legal grounds to challenge the regulations for procedural unfairness, especially where consultation has been superficial, contradictory provisions remain unresolved, and vital industry feedback has been sidelined.

6. CONSTITUTIONAL CONSIDERATIONS

6.1. Even if the promulgation of these regulations is ultimately classified as legislative action and therefore falls outside the scope of PAJA, it remains subject to constitutional scrutiny under the principle of legality. This principle, which is embedded in section 1(c) of the Constitution, requires all exercises of public power to be lawful, rational, and consistent with the rule of law.

6.2. The proposed firearm restrictions in the draft amendments do not appear to bear a rational relationship to the stated objective of improving public safety. In practice, private security companies perform critical protective functions, particularly in areas underserved by the South African Police Service. There is no indication that firearm use by compliant, registered private security officers has led to systemic harm that would justify the imposition of sweeping prohibitions. In the absence of a clear evidentiary basis, the regulations fail the test of rationality as set out in *Pharmaceutical Manufacturers*.

6.3. The regulatory scheme also suffers from arbitrariness and legal uncertainty. It provides no standards, appeal mechanisms, or avenues for case-by-case exemptions. The lack of flexibility in addressing different risk contexts or industry needs gives rise to a scheme that is rigid, exclusionary, and unworkable in practice. It undermines the principle of legal certainty and imposes unpredictable consequences on regulated actors.

6.4. Moreover, the blanket restrictions on firearm use by trained professionals may unjustifiably infringe on constitutional rights. This includes the right to security of the person under section 12 of the Constitution, particularly in communities where public policing is insufficient and individuals rely on private security for protection. It also implicates the right to freedom of trade, occupation, and profession under section 22, by constraining security companies from delivering the services they are lawfully licensed to provide.

6.5. In view of these concerns, the proposed regulations are incompatible with the principle of legality and therefore constitutionally invalid. Ordinary citizens whose security depends on these services were not given a real opportunity to understand, debate, or shape regulations that directly affect their safety. This procedural deficiency offends the principle of participatory democracy and the right to fair administrative action.

6.6. **Specific Constitutional Rights at Risk of Infringement**

6.6.1. Section 11 of the Constitution enshrines the right to life as an absolute and non-derogable right. The proposed regulations, by significantly limiting the circumstances in which private security providers may possess and use firearms, threaten the protective capacity of these providers in high-risk environments. In communities where the South African Police Service is under-resourced or unable to respond adequately to violent crime, private security firms often serve as the first and only line of defence. If private security officers are disarmed or denied the tools necessary to provide meaningful protection, the lives of ordinary citizens—especially those vulnerable to armed robbery, violent home invasions, or hijackings—are placed at greater risk. The regulations thus create a situation where the state, by regulatory fiat, indirectly diminishes the real capacity of individuals to safeguard their most fundamental right: the right to life.

6.6.2. Section 12(1)(c) of the Constitution guarantees every individual the right to freedom and security of the person, including the right to be free from all forms of violence from either public or private sources. In a country with persistently high rates of violent crime, including home invasions, sexual violence, and armed robbery, many citizens have no choice but to rely on private security to secure this right. The proposed regulations risk undermining the very means by which law-abiding citizens have managed to reclaim some sense of security in the face of the state's inadequate policing. By restricting the ability of private security providers to use or deploy armed personnel even in demonstrably dangerous environments, the state fails to uphold its obligation to protect citizens from private violence and indirectly exposes them to greater harm. The consequence is that individuals, particularly those in middle- and lower-income communities, are left more vulnerable to criminal elements against whom they have no adequate defence.

6.6.3. Section 23 of the Constitution guarantees the right to fair labour practices. By prohibiting security officers from adequately defending themselves or the individuals and property they are employed to protect, these regulations amount to an infringement of this section. One of the core elements of fair labour practices is the obligation of an employer—or in this case, the regulatory framework governing the industry—to ensure a working environment that is both safe and secure. When security personnel are placed in high-risk situations without the means or legal backing to respond effectively to threats, their physical safety is compromised. This not only undermines their dignity and well-being but also exposes them to heightened danger, anxiety, and potential harm in the course of their duties. Therefore, the restrictions imposed by the regulations effectively create working conditions that are unfair, unsafe, and contrary to the constitutional rights of workers in the security sector.

6.6.4. Section 25 of the Constitution protects individuals from arbitrary deprivation of property. In the current climate of property-related crime—including home invasions, theft, land incursions, and business looting—armed private security has become essential to protecting both movable and immovable property. The proposed regulations frustrate the efforts of homeowners, business operators, and landowners to secure their assets through contractually agreed private protection services. Where the state does not have the resources to protect property but also imposes rigid regulatory restrictions on private security firms, it effectively undermines an individual’s ability to exercise their constitutional right to protect and preserve their property. This is particularly concerning for those who have already invested significantly in lawful and regulated private protection contracts, which may become unenforceable or ineffective under the new framework.

6.6.5. Section 36 of the Constitution allows rights in the Bill of Rights to be limited, but only in terms of law of general application and to the extent that the limitation is reasonable and justifiable in an open and democratic society. The proposed regulations, by severely limiting the availability of armed private security without clear evidence of necessity or proportionality, may not meet the standard for justifiable limitation. There has been no indication that the regulations were informed by current crime statistics, operational risk data, or a policy paper assessing their effect on public safety. Without a clear rational connection between the restrictive measures and the stated purpose of the regulations, the limitations imposed are disproportionate and may amount to an unjustifiable infringement of fundamental rights. For the law-abiding citizen, the net effect is a curtailment of security without a meaningful gain in public order or safety.

6.6.6. Section 22 entitles every citizen to freely choose their trade, occupation, or profession, and to practise it freely. The private security industry is one of the largest employers in South Africa, and many individuals have lawfully entered into this profession under a regulatory framework that recognised the need for armed services in high-risk sectors. The proposed regulations would, without adequate justification, prevent many security officers from continuing in their roles or severely limit the range of services that private security companies can lawfully provide. This not only places livelihoods at risk but also undermines the legitimate contractual arrangements between firms and their clients. It restricts citizens from pursuing and practising a lawful occupation and may render entire business models unviable. In turn, the public is denied the benefit of a profession that provides critical protective services.

6.6.7. Section 205(3) of the Constitution places a duty on the South African Police Service to prevent, combat, and investigate crime. However, in practice, widespread under-resourcing and inefficiencies in policing mean that this constitutional duty is not consistently discharged. In response, the private security industry has become a key partner in maintaining public safety and filling the gap left by the state. The proposed regulations, by disabling many of the industry's crime-prevention tools and strategies, not only undermine the efficacy of private security but also impair the broader national objective of crime prevention. When the state both fails to uphold its policing obligations and restricts others from stepping into the breach, the result is a vacuum in which ordinary citizens are left vulnerable and unsupported. This compounds the infringement of rights and contributes to a broader breakdown of public confidence in the rule of law.

7. DIRECT COMMENT ON THE DRAFT AMENDMENTS TO THE REGULATIONS

7.1. Insertion of regulations 13A, 13B and 13C in the Regulations

7.1.1. For the most part these proposed draft amendments to the Regulations are mostly a redrafting of Regulation 21 and 22 of the Firearms Control Act 60 of 2000 (“FCA”), and SAGA objects to the entirety hereof, as they seek to supersede the powers of the Registrar of the FCA.

7.2. It is apparent that the drafters of these Regulations have little to no practical understanding of firearms, the realities of private security operations, or the legal framework currently governing firearm ownership. Provisions dealing with ammunition quantities, use contexts, and definitions (e.g., “high calibre weapons”) are either arbitrary or unclear, and reveal a lack of familiarity with the FCA and its Regulations or with firearms in general.

7.2.1. For example, the assumption that shotguns are standard-issue equipment in urban armed response units is wholly incorrect. In reality, shotguns in many situations are impractical especially used in confined spaces, yet the regulations are drafted on the false premise that they are commonly used by security officers in everyday assignments.

7.2.2. Definitions: Weapon

7.2.2.1. The definition of weapon is patently absurd, vague, and repetitive. The inclusion of this definition broadens the scope of what is classified thereto to any conceivable corporeal object. This thus renders the definition of (b) and (c) superfluous. Notwithstanding the aforesaid position, there is irrationality in defining handcuffs or devices capable of restraining a person as a weapon.

7.2.2.2. The Oxford English Dictionary defines a weapon as *“a thing designed or used for inflicting bodily harm or physical damage”.* Self-evidently, these regulations seek to illogically extend the definition to devices that are not intended to cause bodily harm or physical damage – which clearly serves no purpose other than to overregulate necessary equipment used by private security officers in the execution of their duties.

7.2.3. Definitions: High Calibre Weapon

7.2.3.1. The proposed Regulations make repeated reference to the term “high calibre weapon” without offering any statutory or technical definition. This omission renders the term legally ambiguous and impossible to apply with certainty. In firearms nomenclature, “calibre” refers to the diameter of the firearm’s bore and, by extension, the size of ammunition used. However, the designation of a firearm as “high calibre” is inherently subjective and context-sensitive.

7.2.3.2. For instance, a 7.62×39mm semi-automatic rifle—commonly used in civilian and security contexts—is often perceived as powerful, yet it is substantially less powerful than a hunting rifle chambered in .300 Winchester Magnum, which has a much greater effective range, energy, and penetration. Similarly, a 12-gauge shotgun may be considered “low calibre” due to its classification, yet its impact at close range can far exceed that of a typical rifle.

7.2.3.3. This lack of precision in the regulations invites arbitrary enforcement and creates confusion for both firearm owners and security providers, who are left to speculate whether their lawfully licensed firearms are captured by the undefined term.

7.3. **Regulation 13A – Firearms and ammunition**

7.3.1. Regulation 13A (1) in general is a **duplication** of the provisions of Regulation 22 of the Firearms Control Act Regulations. The Firearms Control Act and Regulations are the appropriate legislative instruments to regulate the use and control of firearms and ammunition. It is irrational to duplicate provisions in draft amendments to the Regulations that are already enacted by an existing legislative framework.

7.3.2. More concerning is that the draft amendments seek to expand on the present legislative framework impermissibly and provide additional limitations not supported in the FCA Regulations. In addition, it is noted that the provisions are not only repetitive but seek to include <u>specific</u> limitations in the mass of provisions incorporated into the amendment, which cannot be construed as being drafted in good faith.

7.4. Regulation 13A(1)(j) and (k)

7.4.1. We make specific reference to the proposed **Regulation 13A (j) and (k)** which states as follows:

> (j) the security business and the security officer are not under State investigation in respect of an offence specified in the Schedule to the Act relating to the unlawful use of force or an offence provided for in Schedule 2 of the Firearms Control Act, or are not being criminally prosecuted in respect of such an offence;
>
> (k) there is no pending improper conduct enquiry initiated by the Authority into an alleged violation of the Code of Conduct, by the security business or the security officer relating to an offence contemplated in paragraph (i);

7.4.2. Sub-regulation 13A. (1) paragraphs (j) and (k) are extremely broad. It appears that if a security firm is simply under investigation for an alleged or suspected offence or violation, it will be prohibited from issuing firearms to any of its armed officers. Therefore, a security firm can effectively be prevented from conducting business and servicing its contracted clients without being officially suspended, and simply by being subjected to an investigation.

7.4.3. This process is open to abuse, considering the potential that even unsubstantiated or malicious accusations from a variety of origins can result in such an investigation or enquiry. Should a firm be unable to service its contracted clients due to its inability to provide armed security officers, it can result in the termination of contracts and the firm going out of business.

7.4.4. This provision is badly drafted, but notwithstanding, limits a security business from issuing firearms to its staff because it faces a state investigation. This is an unjustified infringement on the business, as Schedule 2 of the FCA are offences which may give rise to a declaration of unfitness.

7.4.5. The draft amendments would prohibit the issuing of a firearm without a determination on fitness. This is patently unlawful in the circumstances and is open to abuse. In any event, there are sufficient legislative measures in terms of Section 102 or Section 103 of the FCA to ensure the safe use and / or confiscation of firearms which may be enforced in achieving this objective.

7.5. Regulation 13A(q) and (u)

7.5.1. We make specific reference to the proposed **Regulation 13A (q) and (u) which** states as follows:

(q) such issuing does not include security officers possessing firearms at the following public places:

(i) Taxi rank;
(ii) Cemetery;
(iii) Stadium;
(iv) Shopping Malls;
(v) Church;
(vi) Restaurants;
(vii) Parks;
(viii) Hospital
(ix) Public and Private Schools; or
(x) Any other similar public establishments.

(u) A security service provider using or intending to use firearms in a public place as envisaged in sub-regulation (1) of this regulation must meet the following requirements-

(i) the public place must not be declared a firearm free zone as by the Minister in terms of Section 140 of the Firearms Controls Act;

(ii) the use of firearms must be in the interest of public safety;

(iii) firearms must not be used unless a risk assessment report has been submitted to the Authority;

(iv) steps must be taken to mitigate identified risks in terms of paragraph (b) of this regulation; and

(v) there is no other alternative means of protection without using high calibre firearms.

7.5.2. Paragraph (q) effectively prohibits security officers from possessing firearms in public locations unless all the extensive requirements under paragraph (u) are complied with.

This infers that even armed response officers are prevented from doing their jobs and servicing their clients, since they patrol, transit through, and stand-off in these public locations.

7.5.3. It also means that shopping malls, churches, restaurants, hospitals, and schools cannot contract armed response services unless they meet all the requirements stipulated in paragraph (u) and potentially leaves even residential armed response clients in the lurch.

7.5.4. These provisions are demonstrably irrational for the following reasons:

7.5.4.1. <u>Prohibitions:</u> It prohibits the use of firearms in the listed places. The listed places, include a further "similar public establishment", which is vague. To limit a security company from protecting its client base in any one or more of the designated areas – which renders such places vulnerable to violent criminal action. By limiting the use of firearms as a *de facto* position creates a serious and material risk to these locations.

7.5.4.2. <u>Requirements:</u> The conditions under which carrying a firearm at one of the identified places requires that the Authority be provided with a risk assessment. This poses a serious operational risk and will result in release of potentially confidential information regarding the nature of the work to be undertaken by the security company. These "requirements" cannot be in any way construed to be regulatory – they are operational, and the Authority is not permitted to regulate **<u>how</u>** a security company undertakes its function, but to ensure that they do so within the legislative framework.

7.5.4.3. <u>Requirements:</u> Moreover, these provisions place the sole discretion of the use of firearms in specific tasks to the Regulator, which includes in the interests of public safety. This is illogical and clearly outside what section 35 of the Act permits. The onus this places on a security company limits its effective protection of its clients – unless the security company is able to demonstrate that the task involves interests of public safety. In the interests of public safety has not been defined, and in any event, not an element that can be permissibly or objectively determined by the Authority. This also demonstrates the overreach in terms of which such firearms may be used in terms of the FCA and thus impermissibly extends the power of security companies to act in the interests of public safety – this fails to appreciate that general public safety falls to law enforcement agencies, as security companies are contracted to protect individuals or businesses.

7.5.4.4. Requirements: Mitigation measures must be taken in terms of paragraph (b) is nonsensical. Paragraph (b) refers to the issuing of firearms to security officers. This is governed by the FCA and regulations – and thus to impute such a requirement into the Regulations amounts to a duplication, which affords unfettered discretion to the Authority when exercising oversight functions, and is arbitrary.

7.6. Regulation 13A(s)

7.6.1. We make specific reference to the proposed **Regulation 13A (s)** which states as follows:

> (s) the security officer, is provided with no more than a reasonable quantity of ammunition for the purposes of rendering the relevant security service and the ammunition meets any applicable requirements contemplated in the Firearms Control Act;

7.6.2. Paragraph (s) is vague and ill-defined. What constitutes a "no more than reasonable quantity of ammunition" and how is this determined and quantified? What are the underlying assumptions and their foundations?

7.6.3. Security firms operating in different contexts and with different tasks and purpose requirements need to issue their armed personnel with widely varying quantities of ammunition depending on the duties, requirements of the contract or client, and the nature of the client.

7.6.4. For instance, a firm guarding a rural mine might need 60 or 90 rounds per officer (two spare magazines for a rifle), while an urban patrol needs 45 (two spare magazines for a pistol) — how will “reasonable” be judged?

7.6.5. What can be considered “reasonable” in this regard is therefore open to extremely subjective interpretation, and including such requirements in regulations creates unnecessary and unwanted uncertainty and risk.

7.7. Sub-regulation 13A(8)(f)

7.7.1. We make specific reference to the proposed **Regulation 13A (8) (f)** which states as follows:

> (f) ensure that security officers provided with firearms are properly assessed to the satisfaction of the Authority, including an assessment of their visual and audio capacity, locomotive system, neurological system and general mental and emotional condition at the cost of the security business, at least every 12 months, or within a shorter period which may be reasonably necessary in the circumstances, to verify that they do not suffer from any physical or mental condition that would render their continued possession of a firearm and ammunition as posing an unreasonable risk or as undesirable;

7.7.2. Sub-regulation 13A. (8) paragraph (f) stipulates compulsory annual physical, medical, psychometric, and psychiatric evaluation of all armed security officers at the cost of their employers.

7.7.3. It does not provide the necessary guidance regarding who is certified to carry out these examinations, what criteria must be satisfied, and how one is supposed to assess the mental and emotional condition of armed security officers.

7.8. Sub-regulations 13A(12) and (13)

7.8.1. We make specific reference to the proposed **Regulation 13A (12) and (13)** which states as follows:

(12) A security business which requires the use of a semi-automatic rifle must issue such firearm to a security officer as contemplated in sub-regulation (1) only for the rendering of one or more of the following services -

(a) Protection of valuables which are being transported (cash-in-transit);

(b) Protection and security services at Critical Infrastructure; or

(c) Anti-poaching services.

(13) The Authority may recommend and approve the use of firearms contemplated in sub-regulations (10), (11) and (12) where there are good grounds compelling the issuing of such firearms by a security business belonging to a different category or class specified in the mentioned sub-paragraphs.

7.8.2. Sub-regulations 13A. (12) and (13) place potentially significant restrictions on the issue and use of semi-automatic rifles by private security firms. Unless they are approved by the Authority as per sub-regulation (13), tactical intervention teams and high-risk units will no longer be able to function to their required level of effectiveness due to being prohibited from using semi-automatic rifles.

7.8.3. The implications of this are potentially highly significant. Security officers can protect high value goods in transit with semi-automatic rifles but cannot protect those same goods in their warehouses or depots. Mine security, both in-house and contracted, cannot protect their facilities (often targeted by Zama-Zamas and other armed and dangerous criminal groups) or assets. Tactical intervention teams and high-risk units protecting retail complexes, shopping centres, industrial parks, and corporate offices will similarly be rendered toothless and ineffective. Anti-hijacking units will be forced to confront dangerous hijacking syndicates while armed only with handguns.

7.8.4. Security firms' access to and ownership of firearms are already extensively regulated in terms of the Firearms Control Act and its Regulations. We are unsure what the benefit of further narrowing the acceptable criteria for which types of firearms are considered suitable for which applications will be, especially when such criteria appear to be applied subjectively.

7.8.5. Overall, this restriction will contribute to diminishing the ability of private security firms to protect private and public assets, including people and VIPs. These are just a few examples of immediate harm that results from an overly restrictive regulation that does not consider the complex dynamics of the industry it is applied to.

7.9. Sub-regulation 13A(16)

7.9.1. We make specific reference to the proposed **Regulation 13A (16)** which states as follows:

> (16) Every security business which is in possession of, and using firearms to render security services must install a tracking device in every firearm to track possession and use of such firearms as part of the reporting procedures contemplated in section 4(b) of the Act.

7.9.2. Sub-regulation 13A. (16) requires that all security firms who possess firearms must install a "tracking device in every firearm" to track possession and use of such firearms.

7.9.3. We are not aware of any such devices or technology being currently available, and even if they were, the devices would potentially restrict or impede the operations of the firearm that it is attached to, possibly rendering the firearm ineffective.

7.9.4. This regulation therefore requires firms to adhere to an impossible requirement. Additionally, the purpose of firms keeping the numerous registers in terms of Regulation 22 of the Firearms Control Act and appointing a Responsible Person is to keep track of their firearms, we are unsure what purpose this requirement serves and it is therefore unclear.

7.10. **Regulation 13B**

7.10.1. Regulation 13B(1): This draft regulation imposes a further irrational set of requirements which directly usurp the provisions of regulation 21 of the FCA. Regulation 21 already governs the issuing of firearms by businesses, and specifically Regulation 21 (2) relates to security companies. In addition, the provision is poorly drafted – more so in relation to (d) which reads "*a weapon is free from any defect or* *characteristic which may render it an inherent source of danger …*". This is nonsensical – a weapon by its very nature has the characteristics of which will be an inherent source of danger or easily causing harm. This is why there are stringent safety rules in place when using firearms, whether in public or on a range. On this extremely poorly drafted provision, this prohibits the issuing of firearms entirely.

7.10.2. Regulation 13B(3): This provision expressly vests the Regulator will the power to, insidiously, issue firearm licences. This usurps the provisions of the FCA and Section 20 (2) (a) thereof, and is arbitrarily incorporated into the present draft amendments, is impermissible and serves no legitimate function in achieving the purpose of the Act and its Regulations.

7.10.3. Regulation 13B(5): This provision, *inter alia*, requires active monitoring. There is no definition of active monitoring, which makes compliance therewith impossible. This provision, too, incorporates a "cut and paste" from the FCA Regulations. This itself is arbitrary in nature. Regulations must serve a legitimate purpose in empowering the Minister to achieve the objects of the Act. These provisions fail to meet this standard.

7.10.4. Regulation 13B(7): This provision has no purpose and is unconstitutional. This prevents security companies from using their weapons for training purposes. If it is intended to refer to circumstances in which an imminent or ongoing attack is experienced, this is regulated by the FCA and common law.

7.10.5. Regulation 13B(8): This provision has no purpose and is unconstitutional. This prevents security companies from using their weapons in instances of demonstrations. Private security companies have no authority to act on behalf of the general public, but in protection of their clients' or assets. The exclusion "*unless authorised and permitted in terms of the law*" is also inexplicably drafted. The averred caveat has no relevance to the prohibition.

7.10.6. Regulation 13B(9): This provision serves no purpose. If a security officer is deemed competent in terms of the FCA and associated regulations – there is no rationale for the inclusion of this in the manner it is drafted. See above para 24 for submission on weapon.

7.10.7. Regulation 13B(11): This provision is unenforceable and fails to consider the practical nature of the security work. Whilst there may be instances where compliance is possible, this provision fails to take into account the emergency, dynamic and unexpected nature of security work.

7.10.8. Regulation 13B(12): This provision impermissibly extends the requirements of the FCA, which is the legislative instrument adopted to govern the safe keeping of firearms. This clearly overreaches in what it seeks to achieve and is in direct conflict with the repetitive provisions of (13).

7.10.9. Regulation 13B(14) to (16): These provisions provide the Regulator with unfettered power not envisaged by the Act. It is evident that the inclusion thereof is only seeking to confer power to the Regulator that it would not normally have. This is an abuse of the regulatory scheme and intent.

7.11. Sub-regulation 13B(17) Prohibited Weapons

Prohibited Weapons

(17) Notwithstanding the provisions of regulation 13B, security service providers may not use the following weapons in the rendering of security services –

(a) Tasers;

(b) Tear gas;

(c) Water cannon;

(d) Sponge grenade;

(e) Rubber / Plastic bullet; and

(f) Any other weapon that may harm civilians.

7.11.1. Sub-regulation 13B. (17) prohibits private security firms from using several so-called “prohibited weapons”. This includes rubber bullets and water cannons, which are vital for crowd control tasks. Bizarrely, “Tasers” are also included. Bear in mind that TASER is a specific brand of conductive energy device primarily used to incapacitate people by electric shock, and not the general term for such devices. TASERs are commonly used by law enforcement and private security worldwide as a less-lethal tool.

7.11.2. The only way for a firm to access and use prohibited weapons as per sub-regulation (17) is to apply for exemptions via an extensive process.

7.11.3. This severely restricts the role private security firms can play to protect assets and people, especially in situations where violent strike action and rioting threatens neighbourhoods, businesses, facilities, and people. Removing and restricting access to less-lethal tools creates a significant risk for the safety of security officers, their clients, the public, and even the perpetrators.

7.11.4. Furthermore, PSIRA has no lawful authority to prohibit or restrict non-lethal defensive tools such as tasers, pepper spray, and rubber bullets. These are vital tools and attempting to regulate or ban their use is both unlawful and dangerous, and would expose security officers to greater risk while diminishing their protective capabilities.

7.12. Specific Reference to Prohibited Weapons

7.12.1. Regulation 13B(17): The prohibition of certain weapons is irrational and arbitrary, overbroad and vague. There is no rational basis to prevent security officers from utilising non-lethal weapons such as that which has been described. It is clearly overbroad as it includes "any other weapons that may harm civilians". Notwithstanding the ill-thought through definition of weapon, this incorporates any item that could notional cause harm. The practical implication of these provisions demonstrably places any security officer vulnerable to attack, taking into account the additional limitations on firearms, with no recourse to defend themselves. This falls far short of the duty of the Regulator to ensure that the security industry protects its staff.

7.12.2. Regulation 13B(19): This provision is incomprehensible. It requires that authority be sought 7 days prior to the use of prohibited weapons, but requires a report on any incident involving the use thereof that caused death or damage. Self-evidently this is impossible to comply with, as a future event cannot be known, however, if it refers to a past event, this too is irrational as the circumstances of each incident would have to be assessed in light of the specific facts. This provision, besides having no rational purpose, fails to take into account emergency events or unforeseen circumstances.

7.12.3. There is no basis whatsoever to seek permission from the Regulator to utilise weapons for a specific task if the security company is in compliance with the FCA and Regulations. This amounts to undue influence and infringement of the autonomy of the business, and the imposition of such a requirement will have a detrimental impact to security companies sustaining their business. It is also subject to abuse, as the Regulator has the power to manipulate the outcome of the application in favour of one company over another. There are no checks and balances in place to ensure that this power cannot be abused.

7.13. <u>Keeping of Registers</u>

7.13.1. <u>13B(20) to (24):</u> These provisions are again a repetition of the FCA and regulations. There is already a suitable framework in which to enforce compliance with the maintaining of registers, and this is arbitrarily included in the present draft amendments.

7.14. <u>Inspection and Powers of Inspectors</u>

7.14.1. <u>Regulation 13B(25) and (26):</u> The granting to inspectors of the powers of search and seizure, without a warrant exceeds the mandate, and legislative authority or purpose of the Regulator and amounts to an enforcement function. The Regulator is not designated as an enforcement agency, more so in relation to firearm contraventions, and to impute such powers to an inspector is *ultra vires* on its face. There is no rational basis, other than the unlawful empowering of inspectors, to justify this inclusion as part of the Regulator’s purpose.

7.15. **Regulation 13C**

7.15.1. The provisions herein are already regulated and for that reason the inclusion is plainly arbitrary and designed solely to unlawfully confer power on the Regulator that it is not entitled to.

8. OFFENCES AND PENALTIES

8.1. The offences contained herein are strict liability offences, and offences for which criminal sanctions are unwarranted. A large portion of the offences are for administrative errors, alternatively, where prejudice exists, are covered by the common law crime of fraud.

8.2. These regulations seek to expand the criminal liability that is neither just nor equitable. Whilst there is a need to ensure that records are properly maintained and accurate information kept, the offences are also vague and thus not subject to successful prosecution. Terms such as “undue delay” and “reasonable enquires” are not defined, and in order to sustain prosecution, the security companies must be informed of what is expected of them.

8.3. It is important to note that the Regulations are replete with poor drafting, vague and pointless provisions – and demonstrates unequivocally that the production and drafting thereof have not been properly considered and it is self-evident that the Minister has failed to properly apply his mind to these regulations.

9. BROADER CONCERNS WITH THE DRAFT REGULATIONS

9.1. In SAGA’s view the proposed draft amendments to the Regulations represent significant regulatory overreach, irrational micromanagement, and extreme administrative burdening of an industry already heavily regulated. Furthermore there is a substantial duplication and overlap with the Firearms Control Act and its Regulations, specifically with respect to Regulation 21 and 22, which have almost word for word being transplanted in the Regulations.

9.2. Should they be passed, they would represent a significant threat to the continued existence of the private security industry in South Africa.

10. RECOMMENDATIONS

10.1. If these amendments aim to tighten control over the private security industry to root out rogue and criminal players, they are taking the wrong path. Most would agree that purging harmful entities is a vital task for the regulatory authority—but this can be achieved by enforcing existing laws, not piling on new burdens.

10.2. The FCA and current PSIRA structures already provide sufficient enforcement mechanisms to deal with rogue elements. It is the failure to implement these, not the absence of stricter rules, that drives unlawful conduct.

10.3. Criminal groups thrive by exploiting corruption and inefficiency in state bodies like SAPS and PSIRA, operating as sham security firms. The rational fix is to investigate, prosecute, and convict these bad actors, not to saddle a critical industry with costly, crippling restrictions that punish legitimate players and weaken their ability to serve the public and state. By pushing these changes, the regulator risks harming the very industry it is meant to protect—along with its clients, employees, and the broader economy. If enacted, they will leave us with a less safe, less secure society.

10.4. We therefore submit that these amendments be scrapped, and that enforcement of the current Firearms Control Act and its Regulations be utilised and that a transparent, thorough stakeholder process precede any future proposed amendment to the PSIRA Regulations.

10.5. SAGA places on record that should these regulations be promulgated in their current form, they will be taken on review. We are confident that such a challenge will succeed, on grounds including irrationality, procedural unfairness, and inconsistency with the Constitution.

Yours faithfully

Damian Enslin

Chairperson

South African Gunowners' Association (SAGA)