THE REGULATION OF THE POSSESSION OF WEAPONS AT GATHERINGS

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SUMMARY

The Dangerous Weapons Act 15 of 2013 provides for certain prohibitions and restrictions in respect of the possession of a dangerous weapon and it repeals the Dangerous Weapons Act 71 of 1968 as well as the different Dangerous Weapons Acts in operation in the erstwhile TBVC States. The Act also amends the Regulation of Gatherings Act 205 of 1993 to prohibit the possession of any dangerous weapon at a gathering or demonstration. The Dangerous Weapons Act provides for a uniform system of law governing the use of dangerous weapons for the whole of South Africa and it furthermore no longer places the onus on the individual charged with the offence of the possession of a dangerous weapon to show that he or she did not have any intention of using the firearm for an unlawful purpose. The Act also defines the meaning of a dangerous weapon. According to our court’s interpretation of the Dangerous Weapons Act 71 of 1968 a dangerous weapon was regarded as an object used or intended to be used as a weapon even if it had not been designed for use as a weapon. The Act, however, requires the object to be capable of causing death or inflicting serious bodily harm if it were used for an unlawful purpose. The possession of a dangerous weapon, in circumstances which may raise a reasonable suspicion that the person intends to use it for an unlawful purpose, attracts criminal liability. The Act also provides a useful set of guidelines to assist courts to determine if a person charged with the offence of the possession of a dangerous weapon had indeed intended to use the weapon for an unlawful purpose. It seems, however, that the Act prohibits the possession of a dangerous weapon at gatherings, even if the person carrying the weapon does not intend to use it for an unlawful purpose. The state will, however, have to prove that the accused had the necessary control over

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the object and the intention to exercise such control, as well as that the object is capable of causing death and inflicting serious bodily harm if it were used for an unlawful purpose.

The Act does not apply to the following activities: (a) possession of dangerous weapons in pursuit of any lawful employment duty or activity; (b) possession of dangerous weapons during the participation in any religious or cultural activities or lawful sport, recreation or entertainment or (c) legitimate collection, display or exhibition of weapons. It is suggested that these exclusions are acceptable if the religious and cultural events referred to are not of a "protesting" or "confrontational" nature. If such events are indeed "protesting" or "confrontational" in nature, they are covered by section 17 of the Constitution (which authorises only peaceful and unarmed assembly, demonstration, picketing and the presentation of petitions). Religious and cultural events of a "protesting" or "confrontational" character, where dangerous weapons are displayed, run the serious risk of turning violent, and may result in a violation of section 12(1)(c) of the Constitution, which embodies the right of everyone to be free from all forms of violence.

**KEYWORDS:** Dangerous weapons, culture, public gatherings, demonstrations, religion.