

# Judge fires salvo on unconstitutional gun act

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THE good news for gun owners is that they are not obliged to renew expired, or close to expiring, firearm licences.

This comes after the Gauteng High Court Pretoria's groundbreaking judgment in which Judge Ronel Tolmay yesterday declared two sections of the Firearms Control Act unconstitutional. These deal with procedures which should be followed in renewing licences.

The judge said the system was clearly chaotic and called it a "dysfunctional".

Judge Tolmay gave the government 18 months to get its house in order and to streamline the process dealing with the renewal of valid licences.

She had set aside Sections 24 and

28 of the act and gave Parliament 18 months within which to effect the amendment of the legislation to ensure constitutional compliance.

She further ordered that all licences issued under this act, which are or were due to be renewed, shall be deemed to be valid until the Constitutional Court and Parliament spoke the last word on the issue.

Firearm law expert, lawyer Martin Hood, said the practical effect of this landmark judgment was that gun owners who had handed theirs in to the police because their licences had expired, can now demand their firearms back.

"The police must give it back to them in terms of this judgment."

Another practical effect was there was no need at this stage to renew any lawfully issued licence, whether it had expired or not, until the Concourt or Parliament stream-

lined the act. This would take about 18 months, he said.

The judgment followed an application by the SA Hunters and Game Conservation Association. It expressed its concern at the present "chaotic and dysfunctional" system of licensing and administration of firearms.

It said there was a lack of clarity on how to go about to renew firearm licences after it had lapsed.

As things stand, the act prescribed that the holder of a licence who wanted to renew it after it had lapsed, had to do so three months before its expiry date.

Where a person wanted to renew a gun licence after it had lapsed, that person was deemed to be in illegal possession of the firearm. It had to be handed into the nearest police station.

The owner will not be prosecuted

if it is a voluntary surrender; but, on the other hand, if the licence had expired without good reason, that person could face the criminal consequences of being in illegal possession of a firearm.

This, it was argued, is opposed to a situation where a person was declared unfit to possess a firearm for a number of reasons. In these cases there were clear guidelines available to the firearm owner as to how to dispose of the firearm.

Hood, meanwhile, said hundreds of thousands of South Africans were affected by these unclear laws.

He said gun associations had for the past 13 years tried to streamline these provisions.

The court was told that a draft Firearm Control Amendment Bill was on the table. The government said the bill was due to be introduced by Parliament by September

2016, but was not.

The judge said it was unfortunate that her court was forced to entertain a matter which could have been resolved by introducing the proposed bill.

She also commented that the "sorry state of affairs" regarding the system, was acknowledged by former police minister Nathi Nhleko during this application.

The judge, in making damning findings regarding the administration of the act, found there was unequal treatment of gun owners in the sense that if a licence expired, the owner had no way of renewing or disposing of the firearm.

On the other hand, if the owner was declared unfit to possess a firearm, there were legal means of disposing of the gun. She said in this sense the provisions of the act were irrational.