**Submission to the**

**Portfolio Committee on Justice and Correctional Services**

**on the**

**Domestic Violence Amendment Bill**

**[B20 – 2020]**

**1. Introduction**

The Parliamentary Liaison Office of the Southern African Catholic Bishops’ Conference welcomes the opportunity to comment on this legislation.

The Catholic Church strongly supports the introduction of measures aimed at combating domestic violence. Although much has been done in recent years, legislatively and otherwise, to address domestic violence, and gender-based violence more widely, it remains a scourge in our society.

We believe that some of the proposed amendments will make a positive contribution; they will assist victims and potential victims, and hopefully reduce the incidence of domestic violence. On the other hand, other proposed amendments, especially those to do with mandatory reporting, may have an unintended negative effect.

We comment as follows on specific clauses of the Bill.

**2. Specific Comments**

***2.1. Definitions***

We note, and support, the inclusion of additional definitions for ‘coercive behaviour’ and ‘controlling behaviour’. This will help to expand the reach of the principal Act over harmful types of behaviour.

We support the inclusion of ‘elder abuse’ under the general definition of domestic violence, and the separate definition of ‘elder abuse’. The abuse of older people in the domestic setting is all too often overlooked.

We support the inclusion of ‘spiritual abuse’ under the general definition of domestic violence, as well as the separate definition of ‘spiritual abuse’.

The proposed new definition of ‘harassment’ appears to be an improvement on the old definition.

***2.2. Mandatory reporting***

The intention behind the proposed new sections **2A** and **2B** is clearly to make it more difficult for acts of domestic violence to remain hidden, and for perpetrators to escape liability. However, mandatory reporting is problematic in at least three respects – it can violate people’s dignity and agency and end up disempowering them; it can have the unintended consequence of concealing, rather than revealing, acts of domestic violence; and it can criminalise people who are themselves victims of the violence.

*2.2.1. Violation of dignity and disempowerment:* An important component of the right to dignity is that people should have the right to make decisions concerning themselves, for themselves. This includes the decision that a victim of domestic violence makes about whether or not to report it. To deprive her, or him, of that right, as the proposed section **2A(1)(b)** and **2B(1)(b)** seek to do, takes away an element of the power that person has over their own life. It deprives them of agency and violates their dignity.

The situation is different when the victim (or ‘complainant’) is not in a position to make the reporting decision for themself. This is the case with children and persons with a certain level of mental or intellectual disability. In such cases, mandatory reporting does not deprive the victim of agency, and does not disempower them. To this extent, the provisions of the proposed sections **2A(1)(a)** and **2B(1)(a)** are acceptable.

However, both these sections make the regrettable error of treating older people, and people with physical disabilities, as if they were mentally or intellectually impaired. The wording “… a child, a person with disability or an older person…” in the last-named sections implies that the all three of these groups of people are unable to make informed decisions for themselves when, in fact and in law, it is only the child to whom this incapacity applies. People do not become incapable of making important decisions over their lives just because they have turned 60 or have lost the use of a limb.

*2.2.2. Concealing acts of domestic violence:* It stands to reason that some victims of domestic violence will refrain from seeking help from medical professionals, social workers and other ‘functionaries’ (as they are termed in the definitions section) if they know that these functionaries are under a legal obligation to report the matter to the police. Rightly or wrongly, the victim may not wish to see the perpetrator arrested or charged. The victim may also fear other interventions, such as having their children removed and placed into care.

The point is not whether the victim is or is not justified in holding these fears, but rather that such fears may be so real and deeply-feltthat the victim will choose to forego much-needed treatment or assistance because of them. The only result will be that the specific act of domestic violence will be concealed and, in all likelihood, the cycle will continue.

*2.2.3. Criminalising victims:* The proposed section **2B(1)**places the obligation of mandatory reporting on ‘an adult person’. This would include, for example, a 19-year-old child who sees his or her father assaulting his or her mother. The same would apply to a mother who witnesses one of her children committing an act of domestic violence against another of her children.

The 19-year-old and the mother in these scenarios are themselves in a situation of victimhood, albeit as secondary victims. For the law to make criminals of them (and potentially send them to jail for three months) would be to compound their victimhood unconscionably.

We submit that the provisions concerning mandatory reporting, while well-intentioned, are likely to do more harm than good. They will place innocent family members in impossible situations, with grave emotional and psychological consequences. People who fail to report domestic violence because of fear or feelings of family loyalty and love, stand to be criminalised. Victims of domestic violence will be further victimised by being deprived of their agency and having their dignity violated. And some, perhaps many, victims will avoid seeking help for fear of the consequences that may flow from mandatory reporting.

We therefore strongly submit that the provisions relating to mandatory reporting of domestic violence be removed from the Bill, or be redrafted in a way that takes account of the abovementioned objections.

***2.3. Applications for protection orders and associated matters***

2.3.1. We note, and firmly support, the various proposed provisions aimed at making it easier for complainants to obtain protection orders. In particular, we welcome the introduction of online submissions of applications as set out in **clause 6**.

2.3.2. We also note and support the proposed provisions relating to the furnishing of particulars of electronic communications to the court, as set out in **clause 8.** Emotional and psychological abuse, as well as intimidation, are increasingly occurring through electronic communications, especially cellular phones, and it is fitting that the principal Act should be updated to take this into account.

***2.4. Seizure of weapons***

2.4.1. We support the provision that will allow the seizure of a weapon under the control of a respondent to a protection order ‘regardless of the requirements of the respondent’s employment to possess such a weapon’. (**Clause 13**). There have been an unfortunate number of cases in which members of the SA Police Service and SA National Defence Force have used their service firearms to carry out, or threaten, acts of domestic violence. This provision will make it easier for such weapons to be seized in the event that a protection order has to be granted against such a person.

**3. Conclusion**

The ongoing problem of domestic violence in our country demands a dynamic and proactive response from the legislature, and for the most part these amendments constitute such a response.

As we have indicated, we do not believe that the proposed provisions concerning mandatory reporting will have the desired effect of reducing the incidence of domestic violence and assisting those who fall victim to it. On the contrary, these provisions may well worsen the position of many complainants.

We wish the Portfolio Committee well in its deliberations on the Bill, and we would be happy to address the Committee verbally if invited to do so.

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