**COMMENTS AND RESPONSES ON THE DOMESTIC VIOLENCE AMENDMENT BILL**

**1. General comments**

|  | **Comments** | **Responses** |
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| 1.1  1.2  1.3  1.4  1.5  1.6  1.7  1.8  1.9  1.10 | **Access Chapter 2:**  (a) All 3 Bills have reference to He/She as opposed to He/She/Them/They to ensure inclusivity. This will ensure that certain LGBTI people are not ignored as perpetrators. The Bills must ensure that clear description of sex and gender-neutral are integrated as part of understanding the demographic of victim and the perpetrator.  (b) The Bills make reference to vulnerable groups but do not provide for survivors of sexual violence. The Department of Social Development has developed the Victim Empowerment Program aimed at supporting, protecting and empowering survivors of crime and violence with a special focus on vulnerable groups.  (c) There was an attempt to promote the Hate Crimes legislation in South Africa and that legislation has not come to being. It is suggested that Parliament must revitalise the process of addressing hate crimes legislation by making hate crime an offense.  (d) There is a need to address similarly the conversion therapy and to have specific laws dealing with acts that can be characterised as reparative therapy as part of new criminal offences.  (e) The Bills must tackle the following aspects:   1. inadequate and improper awareness of intervention techniques for handling domestic violence involving LGBTI people; 2. absence of protocols or manuals for service providers and first responders; and 3. lack of LGBTI people awareness about the benefits of seeking help as well as how and where to seek help when domestic violence occurs.   **ANCWL**:  It must be noted that problems of gender-based violence are structural and systematic. In the absence of structural overhaul that radically shifts economic, political, and economic power from men to women, the status quo may remain.  **Mr Bafana Nhlapo**:  Police stations must have audio-visual recording for all interactions, to enable the monitoring of all cases reported.  **Ms Candice James**:  It is suggested that if domestic violence, gender-based violence and sexual abuse have to be stopped then the justice system must be fixed, staff that is prepared to help victims in courts must be employed and the punishment must fit the crime.  **Centre for Child Law**:  (a) The systems in place to support victims of domestic violence must be strengthened to address the increasing incidences of violence against children.  (b) It is submitted that the proposed amendments to the Domestic Violence Act should be read with those of the Sexual Offences Act in order to align the terminology used in both Acts and the categories of vulnerable persons that both Acts aim to protect.  **Charles Sterzel:**  All three Bills are an attempt to place the blame on men, and they do not consider that in most cases it is the women who are instigators and creators of the situations that lead to the violence against them.  **Children’s Institute**  (a) There should be minimum standards regulating therapeutic services for children who have experienced or witnessed domestic violence.  (b) It is suggested that social workers and police officers should be trained and encouraged to use section 153 of the Children’s Act to remove offenders, rather than women and children, from the household when abuse has taken place in the home.  **City of Tshwane**  It is proposed that the Bill must include an obligation on all functionaries and individuals in the value chain to cooperate and exchange information required for the purposes of assisting and protecting victims.  **Concerned Citizen**  (a) It is submitted that gender based violence cannot be separated from human trafficking as most trafficked victims are actually women and children for sexual exploitation and other objectives. Sex trafficking is another form of gender based violence, a systemic oppression and abuse of women that has to be part of the Bills.  (b) Most human trafficking cases are mixed with a lot of gender based violence, sexual crimes *etc.* and government needs to have clear broader definition of what is gender-based violence in South Africa, when amending these Bills.  **COSATU**  (a) Legislative change on its own is not enough, since there are systemic challenges in the court system and SAPS with the implementation of existing legislation. Additional responsibilities that the proposed amendments demand of the justice system will require adequate funding, support, extensive training and effective accountability mechanisms.  (b) Legislation must be framed explicitly within a victim-centred and survivor-focused approach, and this approach must be stated upfront in the legislation to ensure that there is a common understanding guiding the implementation and coupled with training.  (c) The expanded obligations on the Departments to provide services to victims requires adequate budgeting and the expansion of capacity to effectively provide these services. Public awareness of these services is also crucial.  (d) Legislation must strengthen the commitment to budgetary allocations that respond to the institutional weaknesses in the response to gender-based violence.  (e) Legislation must provide for audits and recommendations on institutional implementation capacity, e.g. there must be an audit of police stations and courts regarding capacity to implement legislative requirements.  (f) Public representatives must be held to account in cases where they are accused of gender-based violence, and this must apply to political parties and civil society organisations and leadership.  (g) Treasury must ensure that proper training is budgeted for, in addition to the court, police and shelter requirements.  (h) Domestic violence must be criminalised, and police records must show the relationship between the perpetrator and victim and provide a gender breakdown of victims and perpetrators, and regularly report on these statistics. | (a) This is addressed in the Domestic Violence Amendment Bill (DVAB) as it uses gender neutral terminology (as is done in the Act) and not inter-changeable pronouns.  (b) Vulnerable groups and key populations refer to sub-categories of persons who due to specific characteristics may be more susceptible to sexual violence. Not all survivors of sexual offences would be considered part of a vulnerable group. For example a disabled person or a child may be. The DSD VEP would apply to all victims of sexual offences with a special focus on the vulnerable.  (c) The comment is noted.  (d) The DVAB does not speak to what is commonly understood as conversion therapy. Behaviour therapy is included by way of section 7(4A) whereby the court may conduct an enquiry in terms of the Prevention and Treatment for Substance Abuse Act and commit the respondent to a treatment centre for substance abuse and may include referral for anger management etc. The aim is not to link this to a crime.  (e) The Bill covers those aspects as follows:   1. the identified departments are obliged to promulgate directives which will guide the processes to be followed within that department in cases of domestic violence; 2. same as (i) above; 3. the department and the Government Communication and Information System will undertake an awareness drives after the promulgation of the Bills.   The submission is noted. The proposed directives for the various departments aim to bring about a multi-sectoral approach to addressing GBV. Together with training it is hoped that this will bring about an institutional change.  The proposal is noted. It however falls outside of the reach of the Bill.  It is noted that the problem facing gender-based violence is systemic. The directives to be published for clerks of court will provide for steps to be taken against a clerk of the court for failure to comply with those directives in performing their functions in terms of the Act. The Bill provides for the notification of complainants on the outcome of their application for a protection order by SMS or other social network platforms, and therefore complainants would not have to go to court every time to make enquiries.  (a) The Bill provides for collaboration between different departments and this would enhance support to victims of domestic violence including children.    (b) An alignment of terminology has been made between the DVAB and the Protection of Harassment Act as they contain mirror civil provisions.  The Bills are gender neutral and applicable to perpetrators irrespective of gender. It is however common cause that the majority of victims of domestic violence are women and the majority of perpetrators are men.  (a) The submission is noted and will be referred for consideration in the development of directives in dealing with children exposed to domestic violence.  (b) While section 7 of the Domestic Violence Act empowers the court to order the respondent not to enter or not to remain in the shared residence in certain instances, it is agreed that training should cover all appropriate remedies as each circumstance is unique.  The Bill intends to enhance cooperation between various departments to ensure proper functioning of the Act. The directives anticipated in the Bill will set out the processes to be followed by the Departments in dealing with issues of domestic violence, and how other Departments are engaged.  (a) Trafficking in persons and other acts associated therewith are criminal offences under the Prevention and Combating of Trafficking in Persons Act. These cases are extremely serious as they carry fines of up to millions of rand in fines or imprisonment for life. Those cases could not be incorporated under the Bill, as they would normally not necessarily involve people who are in a domestic relationship. If a trafficking case involves people who are in a domestic relationship, the case would better be deal with under the Trafficking Act for the imposition of harsher fines or sentences rather than under the Domestic Violence Act.  (b) The submission is noted. Government seeks to deal with the broad range of crimes associated with gender based violence under various pieces of legislation. The DVAB deals with a civil process aimed to prevent or interrupt criminal activity from taking place within an inter-personal relationship.  The Bill seeks to close the gaps that exist in the system that prevent the effective protection of complainants. The funding will come from the existing budget of each Department, and the directives to be published will likely provide for the training of personnel, thereby improving accountability of each Department.  (b) The overarching policy framework is explicitly victim-centred and survivor focused. Each amendment seeks to give effect to this approach and will be concretised in training on the directives to be issued in terms of the DVAB.  (c) The budget of the Departments will accommodate the new requirements and capacity needs. Public awareness will also be undertaken.  (d) The point is noted.  (e) This is a matter that will be covered by the directives.  (f) The Act as it currently stands, and the amendment thereto, apply equally and similarly to everyone in the country, whether they are politicians, public servants or private individuals.  (g) The proposal is noted and supported.  (h) The Domestic Violence Act is a civil instrument and does not criminalise actions other than non-compliance with the Act. Certain acts of domestic violence are crimes in their own standing. Consideration could be given to gendering data collection. |
| 1.11 | **SAWID**  Consider language that is inclusive to all vulnerable populations as there are parts that specifically speak to terms such as s/he in the proposed bill, when it should read “He/She/Them/They”. | The language used in the DVAB is gender neutral. |
| 1.12 | **Wise 4 Afrika**  We expect that all police stations will be fitted with closed cctv cameras, that police officers who respond to domestic violence calls will be equipped with cameras to photograph injuries and the mayhem they find at the home. We propose that every province should have a hotline for victims of domestic violence and that every police station must have a domestic violence unit.  **Police Mistrust and Misconduct** - must be addressed to create a safer space for victims/survivors and to prevent revictimization. As such we recommend the installation and use of CCTV cameras in all police stations, especially to record police interactions with accused perpetrators who seem to enjoy a comrades that enables them to escape the full might of the law. Guidelines should be put in place to protect victims/survivors in the implementation and use of CCTV data.  In addition body and dash cameras should be used by police to capture police interaction with the accused and during home searches. This would mitigate current challenges related, but not limited to, disappearance of dockets, accepting of bribes, coaching and advising the accused on escaping the law including advising them to open frivolous counter assault cases.  **Repeat Pattern of Domestic Violence** - A police registry of those arrested and/or convicted for domestic violence must be automated and made available for reference and including for prosecutors.  **Domestic Violence Related Criminal Record of Visitors** - where available embassies must review the record of visa applicants for domestic violence history and deny entry accordingly. This is being successfully implemented in other jurisdictions such as Australia. In addition, the Department of Home Affairs cooperated under pressure to deny the entry of convicted abuser, Congolese musician, Kofi Olomide, following a petition to ban him from entry due to his horrific record of abuse.  **Consequence Management** - we wish to recognize the inclusion of consequences to act according to the law by those in charge such as police, prosecutors, etc., and emphasize that this is an important aspect to ensure adherence and execution of the measures proposed. | While it would provide ease of mind to officials and members of the public alike allocation of electronic support and equipment is subject to available budget. A national hotline is available and may be preferred due to the movement of victims of domestic violence. The SAPS FCS Units are operational across the country. Due to personnel constraints specialised trained officials are allocated to one or more police stations to deal with these matters.  It is hoped that the revision of directives and the ensuing training will provide a platform to re-establish trust between the police, other departments and the communities they serve.  The CAS system provides a record of all crimes. A separate register could be considered and may be helpful to guide crime prevention efforts and to identify repeat offenders.  The point is noted and will be referred for consideration. Due to the nature of the DVAB it would not be appropriate to include it here.  Non-compliance with directives would result in enquiries relating to misconduct and in certain cases may lead to dismissal. |

|  | **Comments** | **Responses** |
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| 1.13 | **Themi Msane**  If a family has a victim of gender-based violence, the state must carry the financial burden to support members of the family that remains.  These legislative propositions will go a long way in curbing the violence meted out against women. But these must be accompanied by other commitments by both the executive and the legislature. There must be a way of holding those responsible for operationalising these laws accountable. Parliament must be an activist parliament against gender-based violence, and take proactive decisions to hold the executive to account on the implementation of these laws.  In principle, we support these Bills, provided the amendments we propose are taken to account. | Where a victim of GBV has lost her life the family may bring a civil claim for damages against the perpetrator. Due to the complexity of inter personal violence this may however not be an option. Depending on the circumstances the remaining family members may be able to apply grants or receive support from the DSD. Without a dedicated victims fund it would not be feasible to expect the state to support the family financially.  The issuing of directives coupled with training aims to guide and hold officials accountable for actions. |
| 1.14 | **Mali George Buthelezi**  Need an interpreter to translate the submission. | The DVA seeks to make the content of the Act available to the complainant in the language of choice. |
| 1.15 | **Voice it in action**  Support the Bills but requires the establishment of a Gender Based Violence Command Centre that will treat GBV&F as a National State of Disaster.  Seeks rapid and efficient emergency response systems  Accurate data is required from all police stations.  Extensive analysis akin to Covid 19 should be applied  Knowledge sharing between departments and shifting of funds is key for at risk and other destitute victims.. | The Emergency Response Action Plan and the NSP on GBV seeks to address GBV&F as a matter of national urgency. It is agreed that accurate data is needed. |
| 1.16 | **Sonke Gender Justice**  Implementation of more perpetrator rehabilitative interventions, including specialised and targeted rehabilitation approaches will help transform our criminal justice system. To tackle South Africa’s unprecedented levels of crime and violence, we need to decrease the use of imprisonment and stop relying on the criminal justice system to solve social problems. We believe that if the State were to focus interventions from criminalisation, punishment and retribution and towards harm reduction, social justice, and where appropriate, treatment, reparation, and restorative practices; this would lead to a criminal justice system that is more constructive, socially just, and effective. We need to employ policies and interventions that prove to work, rather than simply adopting a “tough on crime” approach, which evidence shows does not curb crime or violence. The time has come to re-evaluate our criminal justice process and policies, reassess the purpose and impact of incarceration, and ultimately move towards a more restorative society. This is necessary to meaningfully address the problem of gender-based violence in our society. | The comment is noted. It is hoped that extending the pathway of services to a broader range of functionaries, coupled with directives and training will provide a holistic approach. The DVAB is primarily a civil remedy but has shifted its focus to one of the primary causes of DVAB by specifically including referral to treatment and substance abuse programs. |
| 1.17 | **Lerato Tsebe**  The GBV–Bills, are welcomed. However, an external mechanism is required for the effective implementation thereof. It is proposed that a body must be established (National Council of Gender Based Violence and Femicide), consisting of doctors, psychologists, therapists and paediatricians, social workers and other appropriate experts. The body needs to be governed by academic experts in the field, experienced NGO, CBO organizations and religious groups. The purpose of the body is to ensure oversight and guidance in relation to the effective implementation of the Bills. | It is agreed that the implementation of the GBV-Bills must be monitored. To ensure effective implementation and to evaluate the impact of the Bills effective monitoring and oversight mechanisms are important. Monitoring and oversight, in the context of the legislative interventions have two subsets, namely:  \* The functionaries that are obliged to implement the Bills (DOJ&CD, SAPS, NPA, Departments of Health, Social Development, Basic Education, Higher Education, Communications and Digital Technologies), must be monitored to ensure compliance; and  \* verified statistical information must periodically be provided to monitor the impact of the laws on addressing their intended objectives, namely whether the Bills are effective to address GBV.  The Bills do not provide for effective mechanisms to obtain statistical information to evaluate their effectiveness. It is therefore proposed that provisions be inserted in the DVA, SOA and the CPA to provide for statistical information to be provided periodically to Parliament to monitor –  \* the impact of the Bills to address GBV; and  \* compliance by the functionaries with their imposed obligations.  A oversight body outside Government is an excellent proposal to monitor compliance with by Government with their obligations in terms of the Bills and the practical effect of the Bills to address GBV. The establishment of such a body in terms of any of the Bills is problematic, at this stage, and will have financial implications which were not considered before introduction of the Bills in Parliament. Furthermore, to determine effective practical implementation of the Bills may pose challenges to a body in the private sector that do not have statutory authority to investigate non-compliances by Government.  A practical solution, that may also address other challenges in the criminal justice system, is to make provision for a victims-of- crimes-centric ombud, consisting of a retired judge, with extensive powers to inquiry into conduct of functionaries involved in the criminal justice system. Additional legislation may need to be promoted for this purpose. |
| 1.18 | **M Mojake, pages 5 to 6; Madokwe, page 6 paragraph 4.3; Mbanjwa page 6; Southern African Catholic Bishops’ Conference, page 2**  The Bill is in general supported. | Noted |
| 1.19 | **Masimanyane Women’s Rights International**  According to the author, the successful implementation of legislation and these amendments are dependent on the efforts and dedication of functionaries who is responsible for their implementation. Training, the monitoring of the result and subsequent corrective measures are essential. | Agree |
| 1.20 | **SAWID**  *Availability of Data for GBVF cases*: Adequate data collection that allows an objective assessment of how pervasive gender-based violence and femicide is in the country is key for planning and developing future interventions to eradicate the problem. In its unpublished report, the CGE recognises the need for all stakeholders to work together to create a capability as well as a hub for GBVF related data. This is in line with the recommendations by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) which called upon member states to “establish a system to regularly collect, analyse and publish statistical data on the number of complaints related to gender-based violence against women”. |  |

**2. Clause 2: Definitions**

|  | **Comments** | **Responses** |
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| **2.1** | **Definition of *‘coercive behaviour’* (clause 2*(c)*)**  2.1.1 **ANCWL**  It is proposed that the definition must include ‘abusive speech’, ‘extortion’, ‘blackmail’, ‘torture’, ‘humiliation’, ‘dehumanizing acts’ and ‘threats to induce favours’. | ‘Abusive speech’ is covered under the definition of ‘emotional, verbal or psychological abuse’. ‘Extortion’ and ‘blackmail’ have similar consequences and are covered by ‘intimidation’ or ‘undue pressure’ as an abusive conduct as long as that conduct is intended to cause the complainant to act or not act against his/her will. ‘Torture’ is covered as an ‘abusive conduct’ or ‘act of force’. ‘Humiliation’ and ‘dehumanizing acts’ bear the same results and are covered under the definition of ‘emotional, verbal or psychological abuse’. ‘Threats to induce favours’ is covered under the definition of ‘intimidation’. |
|  | 2.1.2 **South African Police Service (National Commissioner)**  Provision is made for a number of new categories of domestic violence, which include “coercive behaviour” and “controlling behaviour”. According to the definition, “coercive behaviour” will be committed if a person is subjected to “undue pressure” which causes *inter alia* a complainant to act in a certain manner against his or her will. It is unclear how “undue pressure” will be assessed and what will be considered as such. | As it is currently worded it is dependent on the intention of the abuser. It has been pointed out in comment received that it should be the subjective experience of the complainant. The effect of the behaviour will be determined based on the facts at hand and the effect on the complainant as transcribed and voiced in the application for a protection order. |
|  | 2.1.3 **Pro Bono.org**  We submit that the introduction of the definition of "coercive behaviour" is a welcome inclusion. However, to make the definition more pragmatically inclusive, we recommend that the words "or which have the effect of causing" be inserted after the word "cause". Following this insertion the definition will read as follows–  *"* ***'coercive behaviour'*** *means any abusive conduct or acts of force, intimidation or undue pressure intended to cause* ***or which have the effect of causing*** *a complainant or a related person to act, not to act, or be subjected to certain acts against his or her will;"*  We propose this revision because in its current form, the definition limits this type of abusive behaviour to what the perpetrator intended only; as opposed to the effect that such conduct would have on a victim of such behaviour. This limited focus of the definition on the perpetrator's intentions is problematic for two reasons. First, it sets an exceedingly high standard to be met by the complainant to establish that such behaviour took place, as it solely requires an interrogation of the perpetrator's state of mind. Secondly, it is contrary to the victim-centric approach – which is one of the specially recognised outcomes of the National Strategic Plan on Gender Based Violence and Femicide – in that, as the definition currently stands, no provision is made for the effect of such behaviour on the complainant. We therefore submit that while it is important to consider the perpetrator's intention, it is equally important to consider how the complainant (or related person) is affected by the behaviour, and the definition must accordingly be revised as suggested above. | The point is noted for consideration. The fact that a complainant is able to resist coercive behaviour does not nullify the behaviour. |
| **2.2** | **Definition of ‘controlling behaviour’ (clause 2*(d)*)**  2.2.1 **ANCWL**  It is proposed that the following be added to the definition-   * Chronic criticizing of partner that in essence amounts to psychological abuse; * Threats of imminent economic or financial abuse, physical abuse to the victims or the victim’s close family and relatives; * Conditional care and attraction; * Spying and snooping around either done in person or by installing applications or tracking devices on the victim’s electronic devices; * Overactive jealously, accusation, and paranoia; * Belittling, teasing, and ridiculing; * Uncomfortable sexual interactions; * Pressure to partake in substance abuse; * Stalking; and * Manipulation. | 2.2.1 The proposals are not supported as they are included under existing definitions of acts of domestic violence-   * Criticising a partner is covered under the definition of ‘emotional, verbal or psychological abuse’; * Threats of imminent economic or financial abuse and conditional care and attraction would be made to achieve a certain end and this would be covered under the definition of ‘coercive behaviour’; * Spying and snooping around is stalking which is covered under the definition of ‘harassment’; * These acts are covered under the definition of ‘emotional, verbal or psychological abuse’; * This is covered under ‘sexual abuse’; * This is covered under ‘coercive behaviour’; * Stalking is a facet of ‘harassment’; and * Manipulation is a controlling behaviour on its own.   The proposed addition can also be covered under the catch all provision contained in paragraph *(j)* of the definition of ‘domestic violence’. |
|  | 2.2.2 **Women’s Legal Centre (WLC)**  Supports the addition of both ‘coercive’ and ‘controlling’ behaviour in the definition section and their inclusion in an expanded definition of ‘domestic violence’. This expansion recognizes the various forms of domestic violence that women experience, and that domestic violence is not limited to physical violence. | The comment is noted. |
| **2.3** | **Definition of ‘court’ (section 1 of the Act)**  2.3.1 **South African Women in Dialogue (SAWID)**  The Act must explicitly state that Traditional Courts do not have jurisdiction in these matters. | It is clear from the definition of ‘court’ that it does not include Traditional Courts. The exclusion of "traditional courts", serves no purposes, since no powers are afforded to traditional courts in terms of the DVA. The proposed amendment is to the effect that structure with adjudicative powers is excluded from the Act, which is by implication already excluded.. |
|  | 2.3.2 **Gendered Violence & Urban Transformation in India and South Africa project, Faculty of Humanities, University of Johannesburg; MOSAIC; Lawyers for Human Rights; Callas Foundation; National Coalition of Social Services; National Shelter Movement of South Africa; Saartjie Baartman Centre for Women and Children and Others (referred to as Lisa Vetten), page 5; MOSAIC page 4**  The following amendment is proposed: “court” means any court contemplated in the Magistrates’ Courts Act, 1944 (Act 32 of 1944), and does not include traditional courts”. | See remarks under paragraph 2.3.1 |
| **2.4** | **Definition of *‘damage to property’* (clause 2(e))**  2.4.1 **ANCWL**  It is proposed that the definition must include movable and immovable property. | Property includes both movable and immovable. |
| 2.4.2  **WLC**  WLC welcomes this amendment, in particular the removal of the requirement ‘vested interest’ as recommended in the WLC submissions to the Department in April 2020. | (b) The comment is noted |
|  | 2.4.3 **Lisa Vetten page 5**  Harm to domestic animals must be included in the definition, since respondents frequently make threats to an applicant to kill or harm household pets to coerce and control, and emotionally and psychologically abuse victims. Amendment proposed:  “‘damage to property” means the wilful damaging or destruction of property~~, including those belonging to a complainant~~ including harm to domesticated animals, whether belonging to a complainant or **[in which the complainant has a vested interest]** a related person which causes harm to a complainant | Although the definition may be amended as proposed, it is submitted that this is not necessary, since it is included in the following conduct, as provided in the definition of "domestic violence", namely coercive behaviour (abusive conduct, intimidation, undue pressure to cause a complainant/related person to act, not to act, or be subjected to certain acts against his or her will); emotional, verbal or psychological abuse (which includes threats to cause emotional pain or any conduct inducing fear); and harassment (any conduct that causes harm or inspires the reasonable belief that harm may be caused), among others. |
| 2.4.4 **Legal Resources Centre (the LRC), page 3**  It is recommend that property “in which the complainant has a vested interest” should remain the Bill as it includes a property which the complainant does not own. | It is submitted that the definition already includes property which is not owned by the complainant. |
| **2.5** | **Definition of *‘dangerous weapon*’ (section 1 of Act)**  2.5.1 **Pro Bono.Org**  The deletion of the definition of "dangerous weapon" and the subsequent introduction of the definition of "weapon" in the Bill are noted. The commentator indicates that it notes, with concern, that the inclusion of the words "grievous" and "dangerous" in the proposed definition of "weapon" which sets an unfavourably high standard to be met in describing what constitutes a weapon for purposes of the Act - This is because the qualification of bodily harm that is "grievous" or a wound that is "dangerous" relegates (ordinary) bodily harm and (ordinary) wounds to a state of unimportance, in circumstances where any bodily harm or wound should be afforded seriousness if occasioned by abuse. It is recommend that the words "grievous" and "dangerous" be omitted from the proposed definition of "weapon". It is further recommend that the words "an assault" as it appears in this definition be replaced with the term "physical abuse", a term which is explicitly defined in both the Bill and the Act. | The Bill has consolidated firearms and what was defined as a dangerous weapon under the definition of ‘weapon’. This definition should be read together with section 9 which regulates the seizure of weapons. In terms of this section the court may order that a specified weapon may be seized. It is common cause that any object could arguably be used as a weapon. The nature of the weapon is circumscribed in order to avoid uncertainty. A court would use its discretion to determine the nature of the object used and whether it would constitute a weapon as described, for example a stick used for martial arts could be considered a dangerous weapon but may not be in other circumstances.  The components of the crime of assault are intent, harm (or the threat thereof) and causation. The definition of ‘physical abuse’ does not contain the same components and provides for the subjective experience of the complainant. It could be argued that the dispossession of a weapon may need to meet the higher standard where the intention of the respondent is interrogated. |
| **2.6** | **Definition of domestic relationship (clause 2*(h)*)**  2.6.1 **Lisa Vetten page 5**  The qualification of "preceding year" in respect of the sharing of a same residence, premises or property as contemplated in paragraph *(f)* of the definition should be removed. According to the commentator domestic violence may be aimed at one of the parties long after separation and they may be in contact with one another due to children. | The commentator overlooked paragraphs *(a)* to *(e)*, of the definition of domestic relationship, among others, they are or were married, they live or lived together in a relationship, are parents of children, are family members, are or were in a relationship. Only if none of the foregoing situations apply do sharing of a residence become applicable. It is submitted that the "preceding year qualification", is justifiable in the circumstances. |
|  | 2.6.2 **Centre for Child Law**  (a) It is proposed that it is not necessary to use the expression "in the nature of marriage" in paragraph *(b)* of the definition. The fact that people live together is sufficient and there is no uncertainty on the meaning of a term. The term may also lead to factual dispute in relation to what does a relationship in a nature of a marriage mean or entail.  (b) Paragraph *(c)* is not aligned to the Children’s Act’s articulation of the recognition of the broad care arrangements common place in the South African context, such as a person who has no parental rights but voluntarily cares for the child indefinitely, temporarily or partially. It is proposed that the paragraph be amended to recognise such types of informal care arrangements to read:  "*(c)* they are holders of parental responsibilities and rights as contemplated in section 1 of the Children’s Act, 2005 alternatively section 32 of the Children’s Act, 2005;". | (a) The definition seeks to be inclusive. This expression has not been flagged as problematic. It connotes the relationship of the parties and not the legally binding nature of the relationship. For the sake of inclusivity it should be left as is.  (b) The proposal is covered by the use of the phrase “persons who have or had parental responsibility”. The focus is on how the responsibility (formally established or assumed) towards the child establishes a relational connection between the two adults and the adults and the child. The plural is used for parents and persons. Arguably there would be circumstances where two people in a relationship would take care of a child voluntarily who is not their own and then separate. It would not cover a teacher who is *in loco parentis* or a benefactor who pays for the upkeep of a child living elsewhere. Essentially it would be the addition of caregivers. It should be considered that the proposal could be casting the net too wide. The purpose is to allow for an application for a protection order. |
|  | 2.6.2 **City of Tshwane**  The main concern about the provision of ‘shared residence in the last 12 months’ is that parties who are in intimate relationships can live in separate residences but still have abusive relationship that warrants the granting of a protection order. | The time limit was inserted to substitute the restrictive interpretation brought about by the word "recently". Paragraph *(f)* should be read together with the other paragraphs of this definition e.g. if they were ever married or dating the remedy is not limited by paragraph *(f)*. The supposition is that if they no longer share a residence for an extended period and are not otherwise related as required in the rest of the paragraphs the rationale for the application falls away. |
|  | 2.6.4 **Thembi Msane**  We generally welcome the expanded definitions to domestic relationship and domestic violence. | The comment is noted |
|  | 2.6.5 **SAWID**  Remove the restriction to sharing a residence within the previous year as Domestic Violence may occur thereafter especially where there is joint care of children. | This would be covered by (c) of the definition and would not preclude the application for a protection order where needed. |
|  | 2.6.6 **Pro Bono.org**  With reference to paragraph (f) of the definition of 'domestic relationship', we welcome the deletion of the word "recently" and the inclusion of the words "premises or property".  We submit, however, that the newly inserted words – being "within the preceding year" – should be deleted from the definition altogether. In our view, the inclusion of those words –  1 is removed from the reality that domestic violence is impervious to, and unaffected by the passage of time;  2 is incongruent with the tenor of the preceding sub-provisions of the definition of "domestic relationships" in both the Bill and the Act, which define the term with no reference to time; and  3 would not pass constitutional muster because it does not appear to serve any rational or legitimate government purpose. | The substitution of the word ‘recently’ with ‘the preceding year’ seeks to provide certainty as to the passage of time in respect of the sharing of a residence. For example the sharing of a commune by persons not in an intimate personal relationship. An open ended provision which is not time bound could lead to uncertainty as to the reach of the definition. It does not preclude any person listed under (a) to (e) from applying for a protection order subject to (f). |
|  | 2.6.7 **WLC**  Concern is raised regarding the requirement of the sharing of residence, premises or property within the preceding year. WLC submits that this specific time frame is very limited and does not take into consideration the reality of people’s lives where a respondent, who may have been away from the shared property for a longer time period of a year, but still poses a danger to the complainant. An example of this may be where the respondent has been in prison for over a year but poses a real ongoing danger to the complainant when he is released from prison. WLC submits that no time restriction should apply.  WLC recommends the section reads as follows:  (f) they share or shared the same residence, premises or property | The comment is noted and already explained. |
| **2.7** | **Definition of ‘domestic violence’ (clause 2*(i)*)**  2.7.1 **Children’s Institute**  It is proposed that a specific reference to ‘corporal punishment’ be inserted under the definition of domestic violence. | Corporal punishment would be incorporated in the definition of "physical abuse". The relevant provisions of the Children’s Act would apply. |
|  | 2.7.2 **City of Tshwane**  It is proposed that the definition of domestic violence should include *“deliberate deprivation, without just and legal course, of individual constitutional rights”*. | The proposed insertion would seem to be covered by paragraph *(j)* of the definition of domestic violence. |
|  | 2.7.3 **Thembi Msane**  We are particularly happy that the definition of domestic violence now includes coercive behaviour and forced entry into places of residence and places of work without approval. | The comment is noted. |
|  | 2.7.4 **Lisa Vetten pages 6 to 7**  It is proposed that the definition of "domestic violence" be broadened to include the following conduct:  (i) Ukuthwala, the abduction of women and girls with the intention of forcing them into marriage.  (ii) Forced marriages, to allow for a protection order against any family member or other person seeking to force her into marriage.  (iii) Abduction.  (iv) Kidnapping. | Ukuthwala, is already catered for in the definition of "domestic violence" if there is a relationship as contemplated in paragraph *(e)* of the definition of domestic relationship between the persons involved. In S v JEZILE 2015 (2) SACR 452 (WCC), it was decided that customary practices of ukuthwala is not recognised or protected under our law. Any conduct associated with ukuthwala (such as assault, abduction, kidnapping and sexual conduct against a female), is therefore a criminal offences. Abduction and kidnapping are *per se* criminal offences. If the persons involved are in a domestic relationship all of the aforementioned are catered for in the definition of "domestic violence", among others as physical abuse; sexual abuse; intimidation; harassment; abusive behaviour, etc. Forced marriages are similarly catered for in the definition of domestic violence, among others as coercive behaviour; controlling behaviour; abusive behaviour, etc. |
|  | 2.7.5 **LRC, page 4**  Exposing or subjecting children to acts of domestic violence could be interpreted that, if a mother who is living with an abusive partner, allow her child to witness domestic violence against herself, the mother will have committed an act of domestic violence. According to the commentator, the word ‘intentional’ may be used to qualify the overbroad application. | The recommendation will be taken into account during the revision of the Bill |
|  | 2.7.6 **LRC , pages 5-6; MOSAIC page 4**  Stalking should be retained as a category of domestic violence. | Harassment now caters for this conduct. |
|  | 2.7.7 **MOSAIC page 5**  "Child neglect" and " all forms of corporal punishment" should be included as additional grounds of domestic violence. | These grounds are already included in the various forms of conduct that amounts to domestic violence. |
|  | 2.7.8 **Southern African Catholic Bishops’ Conference page 3**  "Coercive behaviour' and "controlling behaviour" as new forms of conduct that amounts to domestic violence are supported and expand the reach of the DVA over harmful types of behaviour. Elder abuse, spiritual abuse and harassment as new forms of domestic violence are supported. | Noted |
|  | 2.7.9 **Lisa Vetten page 5**  Paragraph (g) of definition: [stalking] spiritual abuse – stalking must be retained and the definition must be expanded to include conduct of ‘abduction’ and ‘kidnapping’. | Stalking means to stealthy follow another and abduction or kidnapping extends the definition to something outside its ordinary meaning. "Stalking" is omitted due to the fact that "harassment" (paragraph *(f)* of the definition of "domestic violence"), and as defined in clause 2*(o)*, provides for stalking-related conduct since it includes to "following, watching, pursuing" a complainant. Abduction and kidnapping are already catered for in the other conduct that is considered as domestic violence. |
|  | 2.7.10 **LRC, page 6**  Sharing of intimate images without consent should be included as a form of domestic violence. | The conduct in question is catered for in paragraph (a)(iii) of the definition of "harassment", that includes electronic communications of photos and videos that is distributed to cause harm. |
|  | 2.7.11 **SAIFAC, page 8**  The new types of conduct that are recognised as domestic violence are supported. However, in recent years, stalking has often been placed within the realm of violence against women. Studies show that a former violent relationship increases the risk of stalking and a prior romantic involvement has an influence on the seriousness and duration of the stalking. According to the commentator, it seems irrational to remove this from the Domestic Violence Act. | "Stalking" is omitted due to the fact that "harassment" (paragraph (f) of the definition of "domestic violence"), and as defined in clause 2(o), provides for stalking-related conduct since it includes to "following, watching, pursuing" a complainant. |
|  | 2.7.12 **Wise 4 Afrika**  Must include “stalking” and “online violence” | Stalking and violence (whether online or offline) are covered under the definition. |
|  | 2.7.13 **YWFLM**  The Movement proposes that a section on intimate partner violence be specifically included under the definition of domestic violence. This form of violence is rife and we suggest that a specific definition in the Domestic Violence Act be included. We propose the following definition:  “Intimate Partner Violence - occurs between romantic partners who may or may not be living together in the same household.”  The Movement is concerned that the phrase “where the parties do not share the same workplace or place of study”, will lead to an applicant experiencing domestic violence in the workplace or place of study, where both the applicant and accused are working or studying. The Movement request that such a scenario, the accused must not be allowed in the shared space.  “(ii) workplace or place of study, without his or her consent, where the parties do not share the same workplace or place of study;” | If the intimate partnership is not covered under (a) to (d) of the definition, it would arguably resort under (e). It is not a pre-requisite that they should have lived together in the same household.  The application for a protection order allows the court, depending on the circumstances, to order that a respondent may not enter certain premises. The aim is to prevent violence or further violence against the complainant. However where a workplace or place of study is a shared space remedies within the labour law would need to be engaged to balance the rights of the respondent and the complainant, for example the respondent’s right to work and freedom of movement and association and the complainant’s right to be free from violence. |
|  | 2.7.14 **WLC**  WLC does not support the inclusion of the word ‘abusive’ (see paragraph (j) of the definition). The ‘any other behaviour’ is already qualified by the words ‘harms’ or ‘inspires the reasonable belief that harm may be caused’; to add ‘abusive’ renders the inclusion of this type of behaviour in the definition of ‘domestic violence’ tautologous and should therefore be deleted. | The point is noted and will be considered during the revision of the Bill. |
|  | 2.7.15 **Definition of ‘domestic violence’ – ‘exposing children to domestic violence’:**  **ANCWL**  (a) It is proposed such provision include ‘other/related persons’ in addition to children.  **Children’s Institute**  (b) The provision should be expanded to include ‘related persons’. | (a) The proposal is not supported as that would inadvertently include someone who is not in a domestic relationship.  (b) The proposal is not supported as that would inadvertently include someone who is not in a domestic relationship. |
|  | **Definition of ‘domestic violence’ - *‘stalking’*:**  2.7.16 **NCWL**  It is proposed that ‘stalking’ not be removed from the Bill, as removing it fails to acknowledge the various forms domestic violence can take.  2.7.17 **Children’s Institute**  Recommendation is made that ‘stalking’ should not be deleted from the Act, as it can be part of an act of domestic violence against an intimate partner. To remove it from the Act and wholly placing it under the Protection from Harassment Act shows a failure to acknowledge the various forms that domestic violence can take.  2.7.18 **COSATU**  Although stalking is covered under the broader definition of ‘harassment’, the Act previously included both stalking and harassment and this should be retained. Stalking is a concept that is understood and used widely, and the Bill should therefore refer to harassment and stalking.  2.7.19 **Pro Bono.org**  Whilst we also note that the definition of "stalking" has technically been incorporated into the definition of "harassment", this is neither necessary nor advisable in the circumstances as lay persons are relatively familiar with the term "stalking" and will have a more difficult time identifying it in the Act if it is no longer a standalone provision and is rather an incidental aspect of another definition. We therefore recommend that the definition of "stalking" should not be deleted and should remain  intact, as a standalone definition. | 2.8.16 The definition of ‘stalking’ is not discarded but has now been incorporated as part of the definition of ‘harassment’ in alignment with the Protection from Harassment Act.  2.8.17 Stalking is not discarded but placed under the definition of harassment.  2.8.18 Even though stalking is placed under harassment, it is still a ground for the issuing of a protection order as it was before. Stalking as a stand-alone definition is not contained as such in the Protection from Harassment Act, and the intention of the Bill is to align that definition similar to how it is defined in the Protection from Harassment Act.  2.8.19 Stalking is dealt with under harassment. It provides for broader protection in this regard. |
| **2.8** | **Definition of *‘economic abuse’* (clause 2*(j)*)**  2.8.1 **Centre for Child Law**  It is suggested that the definition should include ‘related person’. | The proposed amendments are to include ‘related person’. |
|  | 2.8.2 **Lisa Vetten page 5**  It is recommend that the word "necessities" must be substituted with "expenses" to enable applicants to recover existing household expenses which must be met. | The commentator have not properly consider paragraph *(a)* of the definition deals with "deprivation of economic or financial resources to which a complainant or a related person is entitled under law or which the complainant or a related person requires out of necessity, including household necessities for the complainant or a related person, and mortgage bond repayments or payment of rent in respect of the shared residence or accommodation" – This surely includes the recovering of existing household expenses which must be met. |
|  | 2.8.3 **Yvonne Wakefield: The Warrior Project**  Insert the words “education expenses” between the words “including” and “household expenses” in section 1(j)(a). | Education expenses would be covered under ‘economic or financial resources to which a complainant or related person is entitled under law”. Consideration could be given to the inclusion of education expenses e.g. withholding of school fees or money for a school uniform. |
|  | 2.8.4 **WLC**  Concern is raised regarding the legal meaning of ‘an interest’ referring to the disposal of household effects or other property. The requirement of establishing ‘an interest’ on the part of complainant places an evidentiary burden on her to *prima facie* show that she has an interest in said property. It must be sufficient for her to merely state that she has an interest in the household effects or other property to shift the evidentiary burden onto the respondent for him to then show that she, the complainant, does not have ‘an interest’. | Where a complainant is alleging economic abuse she would need to make a case in this instance of the interest she has in particular effects or property. For example the fact that she is married in community of property would provide evidence of her interest in any shared property. If there is no need to show or allege an interest a complainant would be able to allege deprivation and possibly obtain a protection order without showing that she has a right to said property. This may lead to abuse of this process. |
| **2.9** | **Definition of *‘elder abuse’* (clause 2*(k)*)**  2.10.1 **Centre for Child Law**  It is recommended that the definition of "elder" align with the definition set out in the Protocol to the African Charter of Human and People’s Rights on the Rights of Older Persons in Africa. This definition recognises the different terms used to refer to "older persons". The definition is as follows:  "The words "the aged", "Older Persons", "Seniors", "Senior Citizens" and "the elderly" shall be construed to have the same meaning as "Older Persons". | The term "elder" is ordinarily understood to mean the various terms suggested by the role-player and need not be defined as suggested. |
|  | 2.9.2 **South African Police Service (National Commissioner)**  The definition of ‘elder abuse’ includes social isolation or neglect. Clarity must be provided on what is envisaged by ‘social isolation’ and how this will be determined. | With the advent of Covid-19 the term ‘social isolation’ has taken on the meaning in popular understanding of being isolated from people. Consideration could be given to whether this understanding applies or whether the word isolation would suffice. It seeks to address cases such as where an older person is deprived and in cases physically locked away from social engagement, only to be released to obtain the person’s old age pension. |
|  | 2.9.3 **SAWID**  The term “older person abuse” should be used to align with the Older Person’s Act. The definition of abuse of older persons found in section 30 of the Older Person’s Act should be used. | It is believed that the term does align and incorporates the Older Person’s Act. |
|  | 2.9.4 **YWFLM**  In African tradition, an “elderly” person is not only over 60. We therefore propose that the bill considers different definition of “elderly”. | It is not clear what the suggested criteria should be. Reference to the Older Person’s Act is made to connote vulnerability linked to advanced age. |
|  | 2.9.5 **MOSAIC page 5**  The following new definition is suggested:  "'abuse of older person' means abusive behaviour occurring in any domestic relationship which causes harm or distress or is  likely to cause harm or distress to an older person, and includes physical, sexual, psychological, emotional and financial abuse, and controlling behaviour like social isolation or intentional and unintentional neglect. | It is submitted that the various forms conduct proposed by the commentator are already included in the definition of older person that is defined as "conduct or the lack of appropriate action, occurring within a domestic relationship, which causes harm or distress or is likely to cause harm or distress to an older person as defined in the Older Persons Act, and includes social isolation or neglect". |
| **2.10** | **Definition of ‘emergency monetary relief’ (clause 2*(l)*)**  2.10.1 **Yvonne Wakefield: The Warrior Project**  Change the word ‘educational’ to ‘education’ | The comment is noted. |
|  | 2.10.2 **Lisa Vetten page 5; MOSAIC page 6**  It is recommend that the word "necessities" must be substituted with "expenses" to enable applicants to recover existing household expenses which must be met. | Paragraph (d) of the definition is merely descriptive of what entails "emergency monetary relief" and is subject to the introductory sentence of the said definition that provides that "emergency monetary relief" means compensation for monetary  losses suffered by a complainant before or at the time of the issue of a protection order as a result of the domestic violence. This will include "existing household expenses that must be met". |
| **2.11** | **Definition of ‘emotional, verbal [and] or psychological abuse’(clause 2(m))**  2.11.1 **ANCWL**  It is proposed the addition of “directly or indirectly through the use of social media and electronic communication” to the definition so as to align with the technological advancements. | As long as the conduct amounts to emotional, verbal or psychological abuse, it is covered under the Act no matter if it was effected directly or indirectly through social media. |
|  | 2.11.2 **Lisa Vetten page 6**  It is proposed that a new paragraph *(e)*, should be added to the definition to provide for the following:  "*(e)* threatening or causing harm to a domesticated household animal."  The commentator refers among others US Pet and Women Safety Act of 2017, and the 2019 proposals in respect of the UK Domestic Abuse Bill. | Paragraphs (*b*) (threats to cause emotional pain) and *(e)* (inducing fear) of this definition, and "intimidation" (paragraph (e) of the definition of "domestic violence" as defined in clause 2*(q)*) cater for this eventuality.  It is submitted that the definition provides mainly for "degrading or humiliating conduct", only, and do not take into action that emotional and psychological abuse do extend to threats of violence or harm. |
|  | 2.11.3 **Yvonne Wakefield: The Warrior Project**  Substitute the words ‘emotional pain’ with the word ‘harm’ in 1(m)(b).  Insert the word “manipulating” between the words “degrading” and or “humiliating”.  Between subsections (b) and (c) add (c) gaslighting in section 1(m). And include a definition of ‘gaslighting’ as manipulating a complainant by psychological means to cause a complainant to doubt his or own sanity or memory. | As the word ‘harm’ is defined. The point is taken that it could be used instead of ‘emotional pain’ in this definition.  Manipulating already resorts under the definition of ‘coercive behaviour’  The definition is open ended and could include gaslighting. Consideration could be given to its inclusion. |
|  | 2.11.4 **Pro Bono.org**  We welcome the amendments proposed in this definition.  We recommend, however, that this definition should also include individuated sub-provisions which address abuses relating to self-esteem, self-worth and dignity. To this end, we suggest the following wording –  *"****conduct which is intended to, or which has the effect of diminishing the complainant's or a related person's self-esteem or self-worth****"*; and  *"****conduct which violates the complainant's or a related person's right to dignity****"*. | The definition is open ended and could include this and other related behaviour. |
|  | 2.11.5 **Young Women For Life Movement (YWFLM)**  The Movement understand that the deletion of the word “repeated” means that the burden of proof on the applicant is eased. Proving repeated abuse beyond a reasonable doubt is extremely onerous on an applicant. In such cases domestic violence protection orders have been denied. The psychological impact on a vulnerable applicant is worsened in these instances and the accuser is empowered to continue with the abuse. We believe that the deletion of the word “repeated” will see more women and people from vulnerable groups obtain protection orders. | The comment in support of the amendment is noted. |
|  | 2.11.6 **WLC**  The use of the word **‘to’** in the context of causing emotional pain adds the legal element of intent on the part of the respondent. We recommend that the section be redrafted to replace this element in the definition of emotional, verbal and psychological abuse:  (b) **[repeated]** threats **[to]** that cause emotional pain | The comment is noted and supported. |
| **2.12** | **Definition of ‘functionary’ (clause 2*(n)*)**  2.13.1 **Wise 4 Afrika**  The definition should include Thuthuzela Care Centres in functionaries | The definition of functionaries includes persons who may work at Thuthuzela Care Centres. |
| **2.13** | **Definition of ‘harassment**’ **(clause 2*(o)*)**  2.13.1 **COSATU**  The phrase the *“respondent knows or ought to know” causes harm* may be problematic as to would require victims to prove that the perpetrator ought to have known the behaviour was harmful. The impact of the behaviour on the complainant must be the emphasis, whether or not the respondent understands the behaviour to be harmful. | The provision replaces the phrase *“induces the fear of harm”* which was itself problematic to prove. The complainant will now be required to prove that a reasonable person in the position of the respondent would have known that what the respondent did was wrong. This is an objective test, which would prevent the respondent from saying he or she did not know what he or she was doing was wrong. |
|  | 2.13.2 **Wise 4 Afrika**  On definitions of harassment, roman numerical (i) should mention stalking (watching). Also missing from the list is: Cat Calling - [Webster dictionary definition - the act of shouting harassing and often sexually suggestive, threatening, or derisive comments at someone publicly. Though I seldom witness catcalling or verbal harassment, I've come to understand how constant and burdensome it can be for women, especially when the words used are crude, violent, or degrading.—] | Harassment as an umbrella term includes acts of stalking which are listed in the definition. Cat Calling by a person in a domestic relationship could resort under emotional, verbal or psychological abuse. |
|  | 2.13.3 **MOSAIC page 7**  The word "stalking" must be included in paragraph *(a)* of the definition. | Stalking is none other than to follow, watch, or pursue another person, which is included in paragraph (a) of the definition of harassment. |
| **2.14** | **Definition of ‘harm’ (clause 2*(p)*)**  **Pro Bono.org**  The definition is welcomed. However, it is recommend that "emotional" and "spiritual" harm be included therein. To this end we suggest the following wording –  *" '****harm****' means any mental, psychological,* ***emotional, spiritual,*** *physical or economic harm;"* | The elements of emotional and spiritual harm are dealt with in the definitions of ‘emotional, verbal or psychological abuse’ and ‘spiritual abuse’. |
| **2.15** | **Definition of ‘intimidation’ (clause 2*(q))***  2.15.1 **Thembi Msane**  Supports the new definition of intimidation, which includes intimidation of people related to a domestic partner. The definition of sexual harassment is comprehensive enough, together with the rest of the definitions. | Noted. |
|  | 2.15.2 **Lisa Vetten page 6**  The following amended definition is proposed:  "*directly or indirectly uttering* or conveying a threat to, or causing a complainant or a related person to receive a threat, which induces fear of *~~imminent~~* harm  Remove the requirement of "imminent" in respect of "harm". | The words "directly or indirectly" is not necessary since it qualifies "uttering" (in the form of communication to someone). The proposed amendment is not necessary and is already provided in the definition, namely "conveying a threat" or "causing ... to receive a threat", which provide for indirect communicating a threat.  The word "imminent" is an unnecessary qualification in relation to "harm", and may be removed. |
|  | 2.15.3 **LRC page 4**  Delete the word "imminent". | Agree, see the afore-mentioned comment. |
|  | 2.15.4 **WLC**  WLC does not support the definition of intimidation which requires the inducement of ‘imminent harm’. We recommend that the section be redrafted to reflect other amendments in the Bill which recognise that the element of harm, and not imminent harm, is sufficient for an act of domestic violence:  the substitution for the definition of “intimidation” of the following definition:  “**'intimidation'** means uttering or conveying a threat to, or causing a complainant or a related person to receive a threat, which induces fear **[of imminent**] harm;”. | Intimidation has a specific meaning in law. To align with the revision of the Intimidation Act by the Constitutional Court, imminence is required. |
| **2.16** | **Physical abuse (clause 2*(s)*)**  2.16.1 **Lisa Vetten page 6**  It is proposed the definition of physical abuse, should be extended to include abuse of older persons as contemplated in section 30 of the Older Persons Act, 2005 (OPA). | Section 30(3) of the Older Persons Act, provides that abuse includes a physical, sexual, psychological and economic abuse. Physical abuse is in turn defined as "any act or threat of physical violence towards an older person", which is the exact wording of the definition of physical abuse as used in clause 2*(s)* of the Bill. Sexual, psychological and economic abuse, as contemplated in section 30(3) of the OPA, is catered for in the definition of "domestic violence" and need not be included under this definition. |
| **2.17** | **Definition of ‘related person’ (clause 2*(t)*)**  2.17.1 **Centre for Child Law**  It is submitted that it should be made clear that the definition of "related person" includes a child. It should read:  "any member of the family or household, including a child, of a complainant, or any other person in a close relationship to the complainant;". | The expression "any member of the family or household" or "in a close relationship" includes the child. The proposed inclusion of the word "child of a complainant" would be contrary to the inclusion of the section 32 of the Children’s Act proviso above where the child is not a blood relative. To consider ensuring that there is no room for excluding an application by a parent or guardian for a protection order for a child. This definition should be read together with the definition of "domestic violence" where domestic violence is targeted at the related person (who may be a child) to cause harm to a spouse for example. |
|  | 2.17.2 **South African Police Service (National Commissioner)**  As a result of the inclusion of the reference to “related persons”, the protection offered by the Act is extended beyond a “domestic relationship” to include other persons as well. The Service is concerned about the extension of the ambit both on the side of the victim (complainant) to include “related persons” and on the side of the respondent to other persons who are not in a domestic relationship with the complainant. The initial purpose of the Act was to protect a victim who is in an intimate and personal relationship with the respondent. By extending the ambit of the Act to include “related persons” and the enforcement measures (proposed *inter alia* in the amendment of section 3 to include “any person”) beyond the conduct of the respondent, the ambit of the Act will no longer relate to personal and intimate relationships between the respondent and complainant, but may even result in the regulation of relationships between persons who have no relationship with each other.  For example, the definition of “related person” includes “*any person in a close relationship to the complainant”.* According to the definition, this is persons in addition to family members and members of the household of the complainant. The challenge is that while family members or members of the household of the complainant may be identified clearly, “a related person” is not clearly identifiable and will depend on the subjective worth of a friendship that a complainant may attach to the relationship with a person. It accordingly appears that a protection order obtained by a complainant will be extended to protect persons who are not in a domestic relationship with the respondent, and who may not even have any relationship with the respondent. In addition if police officials are required to enforce a protection order, it will be very difficult to determine whether a specific person is in a “close relationship” with the complainant in order to justify action taken against the respondent because of his or her conduct that is not aimed at the complainant. There is accordingly a danger that the extension of the application of the legislation to include persons in a close relationship with the complainant may be abused and that the enforcement of a protection order will be extended beyond a domestic relationship. | The intention of the inclusion of ‘related person’ is not to extend the protection offered by the DVA to related persons but to recognise that perpetrators of domestic abuse may harm third parties in relationship with the complainant i.e. a child, colleague as an act of abuse towards the person with whom they are in a domestic relationship with. Unless the related person is also in a domestic relationship as defined in the Act they would not be able to apply for recourse in terms of this Act. There may be other avenues of recourse e.g. the Protection of Harassment Act.  In order to apply for protection in terms of this Act the complainant would make a statement and in that statement would explain the nature of the relationship with the related person. The subsequent terms of the protection order would provide the basis of an allegation of a breach of the order, thereby allowing the police official to act in accordance with the order. |
|  | 2.17.3 **Lisa Vetten page 6; MOSAIC page 8**  It is proposed that other persons, who provide assistance to the complainant, should be included in the definition. Such persons may include persons providing psychosocial, legal, medical, and practical assistance and support services to complainants. | It is submitted that the expansion of the definition as proposed, may have unintended consequences, especially in light of paragraphs *(i)* and *(j)* of the definition of "domestic violence". |
|  | 2.17.4 **Pro Bono.org**  We welcome the insertion of a definition for "related person" as it takes into account the unique and diverse familial or living dynamics of various households across South Africa. We note, however, that throughout the Bill there are inconsistencies in where and/or how the term is used. On many occasions throughout the Bill reference is made to "complainant" without "or related person" accompanying the reference; whilst in other instances reference is made to "complainant and related person", without any apparent reason for the differences in usage of terms. The lack of reference to "related person" will undoubtedly also affect all the provisions of the Act which are not sought to be amended by the Bill, where the word "complainant" appears.  To avoid this inconsistency, we suggest that the proposed definition of "related person" be maintained as is, but that the definition of "complainant" as it appears in the Act6 be amended to include a reference to "related person". By so doing, the word "complainant" may be understood and interpreted as including a "related person" without a specific reference to "related person" being necessary in every instance or mention of the word "complainant". | The inclusion of ‘related person’ is not a synonym for complainant. It is included to address behaviour meted out against a related person as an act of domestic violence against the complainant. For example where a child is hurt to intimidate or coerce a wife or to cause her emotional harm without physically hurting her.  The use of the word will be carefully scrutinised in the Bill to ensure that this is the case. The extension of the definition of ‘complainant’ to include ‘a related person’ is not supported. |
| **2.18** | **Residence (section 1 of DVA)**  **Lisa Vetten page 6; MOSAIC page 8**  The following amendment to the definition of residence is proposed:  ""residence' means a permanent or temporary residence, premises, or property".  It is also proposed that the word "home" wherever it appears in the Bill be substituted with the word "residence" | (i) In terms of the definition in section 1 of the DVA "residence' includes institutions for children, the elderly and the disabled", which is without limitation and includes a permanent or temporary residence, premises, or property as proposed as long as it is a place where a person reside. A "premises" or "property" may not necessary be a place of residence.  (ii) The word "home" is used in the Bill, is used only in respect of amendment to section 7(5) (clause 11), where it is provided that the "physical, home and work addresses" is subject to confidentiality in certain circumstances, as provided for in the provision. |
| **2.19** | **Definition of ‘sexual abuse’ (clause 2*(u)*)**  2.19.1 **Centre for Child Law**  The word "or" between Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007) and the reference to the Children’s Act, 2005 makes the definition read as if children only fall under the Children’s Act and not the Sexual Offences Act. It is proposed that the provision be amended to read: "… (Act 32 of 2007) or the Children’s Act, 2005 in the case of a complainant who is a child.". | The proposal is not supported. The definition in the Bill differentiates between "sexual offence" (which includes sexual offence against a child) as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 and "sexual abuse" of a child as contemplated in the Children's Act. |
|  | 2.19.2 **South African Police Service (National Commissioner)**  The definition of “sexual abuse” extends to “related person” and therefore beyond the ambit of offences provided for in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) (“SORMA”) and the Children’s Act, 2005 (Act No. 38 of 2005) (“the Children’s Act”). This is very vague and open to different subjective interpretations. It is unclear how it will be determined whether a particular action *“abuses, humiliates, degrades or violates the sexual integrity of a complainant”.* | The inclusion of ‘a related person’ is to include the sexual abuse of such a person as an act of domestic violence targeted at the complainant. Where the action does not constitute a sexual offence it would be dependent on the specific circumstances for the complainant to make a case explaining how she was abused, humiliated, degraded or violated in such a way e.g. forcing her to flee the house without clothes. The court would finally determine whether the threshold is met for a protection order. |
|  | 2.19.3 **LRC, page 4 and 5**  The definition should include:  (i) ‘Sex-Based Harassment’. The definition should read as ‘unwanted verbal, written, or physical conduct based on a person's sexual orientation, gender, gender expression, or physical appearance’.  (ii) Unwelcome explicit or implicit behavior, suggestions, gestures, messages or remarks of a sexual nature including a person's sexual orientation, gender, gender expression, or physical appearance that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances. | This may be considered, and is probably very relevant to "related persons". |
| 2.20 | **Definition of ‘sexual harassment’ (clause 2*(v)*)**  2.20.1 **COSATU**  (a) The emphasis should not be on what the accused ought to have reasonably known, but rather on the fact that the conduct is unwelcome and demeaning to the complainant. This definition must be aligned with the Code of Good Practice on Sexual harassment under the Employment Equity Act which is defined as  *“unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace, considering all the following factors:*  *4.1 whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;*  *4.2 whether the sexual conduct was unwelcome;*  *4.3 the nature and extent of the sexual conduct; and*  *4.4 the impact of the sexual conduct on the employee”.*  (b) The phrase *“reasonable person”* in paragraph *(b)* of the definition of sexual harassment does not help due to high levels of tolerance of women’s abuse, including some extremely problematic and sexist findings by some judges and magistrates. It is unhelpful to rely on subjective interpretation, and should rather be clearly spelt out to objectively ensure consistency. | (a) The test is an objective one, which determines what a reasonable person in the position of the respondent knows or ought to have known to be unwelcome sexual attention. The proposed alignment will be at odds with what is intended in the Domestic Violence Act as opposed that which is confined to be applicable in the employment setting.  (b) The test to be applied is the objective test, i.e. that of a reasonable person in the position of the respondent. |
|  | 2.20.2 **South African Police Service (National Commissioner)**  The definition of ‘sexual harassment’ includes (under (d) of the proposed definition) “an unwelcome explicit or implicit behaviour, suggestions etc., towards the complainant or a related person that have the effect of offending, intimidating or humiliating the complainant.” The proposed definition requires that the complainant, not the related person, must reasonable be offended. This requirement is not provided for in any of the other forms of domestic violence as discussed above. The complainant, who may not even be present or aware of the behaviour or suggestion, if it has been made to a related person, should be offended. The proposal highlights the dilemma of expanding the ambit of the Act beyond persons in a domestic relationship to include “related persons”. The Service is concerned about the far-reaching implications that the proposed expansion will have and urge the Committee to seriously consider the revision of this aspect.  In addition, the definition of “sexual harassment” includes (under (d)) of the proposed definition) a threat of reprisal for refusal to comply with a “sexual oriented request”. Clarity must be provided on what would be regarded as a “sexually oriented request” as the terminology are open to different interpretations. | The inclusion of the term “or a related person” in (b) seems misplaced in this definition and should be removed.  The term ‘sexually oriented request’ is arguably open to interpretation and would broadly include any request with a sexual connotation to it. As sexual harassment in and of its own does not amount to a sexual offence or a sexual crime the court would have a discretion to determine if the behaviour described provides sufficient reason to grant a protection order. |
|  | 2.20.3 **Thembi Msane**  The definition of sexual harassment is comprehensive enough, together with the rest of the definitions. | The comment is noted. |
| 2.21 | **Definition of ‘spiritual abuse’ (clause 2*(w)*)**  2.21.1 **Centre for Child Law**  The definition of spiritual abuse is supported but it is not clear where exactly it falls under, in terms of the types of abuse or how it will be dealt with that if the Bill is passed, as it can be emotional and psychological abuse. | The definition is a stand-alone term which on its own gives grounds for the issuing of a protection order. It does not have to be part of any definition to be included in the Bill. Although there may be a fine line between it and emotional or psychological abuse, it still finds application under the Bill for the granting of a protection order under the Act. |
|  | 2.21.2 **South African Police Service (National Commissioner)**  The Service is concerned about the ambit of the definition, especially in view of the wide spectrum of religious and spiritual beliefs practised and tolerated in South Africa. The fact that persons in a domestic relationship differ on religious beliefs should not be regulated in law. There is a danger that persons may, especially when it comes to religious matters, react over-sensitively or regard a comment as insulting. Once again, the subjective assessment of a comment made by the complainant may be viewed as insulting, while it may not, objectively be regarded as an insult.  The Service fully appreciates the threat of, and harm caused by gender based violence and the need to protect vulnerable groups. However, the Service is also mindful of the inherent dangers of over-regulation of human relationships. The law cannot and should not be involved in every potential argument or difference of views that may transpire in a close human relationship between persons. | While it is agreed that some resilience is needed in human engagements, the power imbalance at play in abusive intimate relationships has given rise to the need to address additional means of control and power over victims of domestic violence. The inclusion of ‘spiritual abuse’ in the definition of ‘domestic violence’ should be read with the definition of ‘spiritual abuse’. It is more than a mere differing on religious beliefs. Ultimately a remedy will only be granted if the court is sufficiently convinced that the spiritual abuse complained of constitutes domestic violence and warrants protection. |
|  | 2.21.3 **Pro Bono.org**  We welcome the insertion of a definition of "spiritual abuse". In light of the well-documented abuses of people's belief systems in South Africa, this is a necessary inclusion to the ambit of what constitutes domestic violence.  In our view, however, this definition requires some refinement. To this end, we propose that the provision be substituted with the following wording –  *"****'spiritual abuse'*** *means the use, manipulation, retardation or denial of spiritual or religious beliefs or practices to control, dominate, oppress or disempower a complainant or related person, including using religious texts or beliefs as a pretext to justify, minimise or rationalise abusive behaviour;"*  We submit that the proposed definition covers a pragmatically  wide body of permutations under which this form of abuse may arise, without being overbroad and constitutionally non-compliant. | The use of the word “including” in the definition opens the definition up to various facets of abuse. It is suggested that it should be left open ended so as not to be interpreted as a close list of behaviour. |
|  | 2.21.4 **Wise 4 Afrika**  Part (c) replace shame with abuse so the sentence reads: “using the complainant’s religious or spiritual beliefs to control, manipulate or abuse him or her” - in order to also capture the sexual abuse within the religious and spiritual practices as well as the mental abuse that could be effected through such manipulation. | The point is noted and will be considered during the revision of the Bill. |
| **2.22** | **Definition of ‘stalking’ (clause 2*(x))***  2.22.1 **Centre for Child Law**  The rationale for the proposed deletion of the definition is not understood. If stalking is removed, then a "domestic partner" would not be entitled to an order prohibiting stalking as a form of domestic violence. The complainant would have to approach the  court for harassment issue against the respondent for an act of domestic violence and stalking separately under the Protection from Harassment Act. | The definition of stalking is not discarded and has now been incorporated as part of the definition of harassment. The complainant is still able to obtain a protection order against stalking under the Act. |
|  | 2.22.2 **City of Tshwane**  A lot of work must be done with the police, service providers and the victims to highlight that stalking is incorporated under harassment and it is still an act of domestic violence. | The submission is accepted as correct. |
|  | 2.22.3 **SAWID**  Stalking should remain as a lot of victims get stalked first before physical violence occurs. | As explained above, stalking is incorporated under the umbrella conduct of harassment. |
|  | 2.22.4 **LRC , pages 5-6**  Stalking should be retained as a category of domestic violence. | Harassment caters for conduct that amounts to "stalking". |

**3. Clause 3 Section 2(A): Obligations of functionaries relating to domestic violence**

|  | **Comments** | **Responses** |
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| 3.1  3.2  3.3 | **Action Aid SA:**  (a) The WHO does not support mandatory reporting of intimate partner violence by health service providers to police, as there is no evidence that this improves the police’s response to intimate partner violence. The decision of whether to report intimate partner violence should remain with the victim.  (b) Health service providers should offer to report the incident to appropriate authorities (including the police) on their behalf, but only do so if the victim consents to this and is aware of their rights.  **Children’s Institute**  (a) The reporting obligations should be harmonised with the Children's Act to avoid confusion in respect of who is obligated to report, what they must report and to whom. The Children’s Act requires that reports are submitted to the SAPS or designated social workers.  (b) A provision for immunity for reporting domestic violence must be included in the Bill.  **City of Tshwane**  It proposed the insertion in clause 2A(3)*(a)*(i) for the provision to read:  “… provide the complainant with a prescribed list containing the names and contact particulars of accessible shelters and public health establishments, where possible including private facilities/establishments;”. | (a) The Department has noted concerns against mandatory reporting, and proposes that clauses dealing with mandatory reporting in relation to an adult be deleted from the Bill.  (b) Clause 4(3) allows a person who has material interest in the wellbeing of the complainant to bring the application for protection order on behalf of and with written consent of the complainant, except in cases where the complainant is a person who is unable to give the required consent.  (a) Clause 2A provides for the reporting of incidents of domestic violence to a social worker or the police.  (b) Clause 2A(4)*(a)* and 2B(3)*(a)* provide for immunity from civil, criminal or disciplinary proceedings to anyone reporting incidents of domestic violence in good faith.  The shelters may be private or public but health establishment should be public ones. The reason for referring the victim to health facilities that are state owned is so that the impression is not created that victims may be referred to private health facilities at state expense. Victims preferring to go to a private health facility are at liberty to do so, but at their own expense. |
| 3.4 | **South African Police Service (National Commissioner)**  The proposed section 2A(1) read with sub-section (2) places a duty on a functionary, who in the course of the performance of his or her functions, becomes aware that a child, person with a disability or an older person or an adult, is a complainant of domestic violence, must report this to a social worker and the Service. In this regard, the functionary will be required to have knowledge of the ambit of the Act (what constitutes domestic violence) and who exactly is a complainant, especially in view of the proposed expansion of the definition of a complaint beyond persons in a domestic relationship. This may result in matters reported to the Service that are not domestic violence or where the person involved, does not fall within the ambit of the definition of a complainant.  It is important to keep in mind that not every act of domestic violence constitutes an offence. The obligation will mean that matters must be reported by such a functionary to the Service (if the complainant is a child, person with a disability or an older person), even if it does not fall within the mandate of the Service (since it does not constitute an offence). If the incident does not constitute an offence, the only legal remedy available to the complainant will be to apply for a protection order. After the functionary has become aware of such an allegation, it is unclear why the Service should also be informed where the domestic violence does not constitute an offence, especially since the functionary will, in a similar position as a police official, only be able to inform the complainant that he or she may apply for a protection order. It is accordingly unclear what is the purpose of the obligation to report the incident to the Service where no offence has been committed. The purpose of this is even more unclear in view of the proposed amendment of section 6 (which provides for online application orders for protection orders which does not require the assistance or involvement of the Service.)  In contrast, the proposed sub-section (3) requires that the functionary contemplated in section 2A(1) must, if the complainant is an adult person, report the matter to a social worker or (alternatively) the Service (while in matters referred to in sub-section (2), must be reported to both a social worker and the Service). Once again, no differentiation is made between incidents where the domestic violence constitute an offence and incidents where no offence is being committed.  Provision is further made in section 2A that the relevant functionary must conduct and evaluate a risk assessment to provide or refer the complainant for further services. While the Service supports the need to conduct a risk assessment, we are concerned about the potential threat that the reporting of domestic violence may have on the safety and immediate well-being of the complainant, and the threat which may be posed by the respondent once the matter is investigated by the Service. Since we are dealing with persons and emotional reactions, it is impossible to predict the risk which may be triggered by the reporting of domestic violence.  The Service is concerned about the apparent duplication of procedures to address the reporting of incidents of abuse (including the criminalisation of the failure to report such incidents) that are already addressed in other legislation including SORMA, the Children’s Act and the Older Persons Act, 2006 (Act No 13 of 2006). It is unclear how the proposals will be linked to the existing provisions that also aimed at the protection of vulnerable groups.  According to the proposed section 2A(5), a functionary who fails to report his or her knowledge, belief or suspicion that a person is a complainant of domestic violence, is guilty of an offence, even if the act of domestic violence itself does not constitute an offence (as explained above). | All listed functionaries are defined and section 18B provides for directives which include training on the Act. In some instances a matter may be referred to the police where it does not constitute domestic violence or an offence. However the view is that it is better to err on the side of safety when it comes to vulnerable persons such as children, the elderly or persons with disabilities. A multi-disciplinary approach would ensure that matters are referred for the correct intervention to the correct functionaries and in terms of the best applicable law, which may in certain instances not be the DVA. Where it does not constitute an offence but the circumstances allow for an application for a protection order, the complainant should be assisted as best possible to make such an application.  The point is taken that where is functionary is in a position to assist a complainant to apply for a protection order that this should be facilitated. The point is also taken that the person should be referred to the police to address criminal offences committed in the course of domestic violence. The clause will be revisited with this in mind.  The aim of the differentiation was to allow a modicum of discretion where an adult victim of domestic violence does not wish to lay a criminal charge but may be in need of social assistance and support.  It would be hoped that the risk assessment would include the impact of reporting of the incident on the safety and well-being of the complainant.  The reporting of incidents of domestic violence, which may or may not include criminal offences serves to ensure that data on domestic violence incidents remains centralised and can be used to plot the trajectory of such incidents in particular areas for crime prevention and other interventions. A register of such incidents would need to be kept at station level.  The obligation relates to a duty of care on the part of the functionary and not on whether the incident of domestic violence constitutes a criminal offence or not. |
| 3.5 | **Sithembile Mqadi, HP Attorneys**  Victims of domestic violence should go to mandatory Autonomy counselling sessions to be able to unlearn co-dependency on the abuser | While victim services are not regulated in terms of the DVAB, clause 18B provides that directives should be issued to address, among others, services to be provided to victims of domestic violence. This could arguably include therapy or counselling sessions aimed at empowering the complainant. |
| 3.6 | **Thembi Msane**  The obligations created by amendments to Sections 2A and 2B are comprehensive and will establish a societal pact to report cases of domestic violence to the police. | The comment is noted. |
| 3.7 | **Wise 4 Afrika**  The amendments are silent on the training requirements for ensuring the effectiveness of functionaries. We therefore recommend that:  \* For the South African Police Service - a subset of the service should be created to serve in this functionary role  \* Dedicated and on-going training be conducted with clear monitoring and evaluation of the effectiveness of functionaries  \* A domestic violence Whistleblowing Line be setup | The directives provide for training and related matters.  It is unclear what the purpose of a Whistleblowing Line for domestic violence would be. |
| 3.8 | **YWFLM**  Violence against women and domestic violence in particular is shockingly common, and we may become witness to non-consensual or violent behaviour. Intervening as an active bystander signals to the perpetrator that their behaviour is unacceptable and may help someone stay safe. Both the bystanders at the place of the violence as well as from the functionaries should be accountable to support the target of sexual harassment/violence by assisting the survivors/victims as well as ensure the reporting of the violence acts to the relevant institutions.  In this regard, the Movement is happy that an obligation is created on a functionary. The Movement, however, would like to make the following proposals to strengthen these obligations:  1 That community should be included in the definition of a functionary;  2 That the obligation on the functionary be extended to report cases of domestic violence on behalf of victims and;  3 That the punishment for not reporting on a domestic violence. | Mandatory reporting of domestic violence against adults negates the victim’s autonomy. For this reason it is being removed from the Bill. Reporting should only be done on behalf of the victim with the victim’s consent. By placing a reporting obligation on the broader community a victims’ support system may be adversely affected and the community may attempt to take the law into their own hands with adverse outcomes. |
| 3.9 | **WLC**  **Ad 2A(1) and (2): comment on use of terminology and language:**  In 2A(1)(a) the Bill uses the words ‘becomes aware of the fact’; 2A(2)(a) cross refers to 2A(1)(a) but refers to ‘knowledge’. The use of different terminology may create confusion as the nature and extent of the ‘knowledge’ of domestic violence in this context. To avoid this possibility, WLC recommends amending this section to read:  **2A.** (1) A functionary, who in the course of the performance of their duties  or the exercise of their functions in relation to any person—  (a) **[becomes aware of the fact or on reasonable grounds believes or**  **suspects]** has knowledge, reasonable belief or suspicion, that a child, a person with a disability or an older person, is a complainant as contemplated in section 1, must comply with subsection (2); or  (b) **[becomes aware of the fact]** has knowledge that an adult person, other than an adult person with a disability or an older person as contemplated in paragraph (a), is a complainant as contemplated in section 1, must comply with subsection (3).  Ad 2A(1)(a):  WLC supports the inclusion of this clause in the Bill. This clause reflects similar clauses on the duty to report in the both the Criminal Law (Sexual Offences and Related Matters) Amendment Act and the Children’s Act. The recognition of particularly vulnerable victims and the placement of a duty on all members of society to take responsibility for their protection is supported. | The rewording of the clause will be considered. |
| 3.10  3.11  3.12  3.13  3.14  3.15 | **Lisa Vetten**  The proposed section 2A, read with the provisions proposed by section 18B, is an important step towards creating a more comprehensive, multi-dimensional response to domestic violence. The provisions obliging functionaries to report cases of suspected, or known, domestic violence must, however, be qualified. In this regard the following:  (a) Mandatory reporting in respect of children  Sections 150 to 160 of the Children’s Act 38 of 2005, provide for comprehensive procedures to deal with children in need of care and protection, and includes domestic violence. Any act of domestic violence committed against a child is therefore, already addressed by the Children’s Act which, in conjunction with other legislation, has also established a comprehensive procedures of child protection to prevent and respond to all forms of child abuse. Section 2A of the Bill merely provides for reporting of domestic violence where a child is involved and is silent on any further essential processes to effectively deal with the matter. Section 2A is an unnecessary duplication, and it is recommended that the provision be replaced with reference to the relevant provisions of the Children’s Act as the primary piece of legislation in this regard (page 9).  (b) Older Persons  The Older Persons Act, 13 of 2006 is the primary piece of legislation dealing with older persons. Chapter 5 is dedicated to the abuse of older persons and provides important protections in this regard (page 9).  (c) People with disabilities (read with clause 2*(g)*)  Provisions mandating reporting of domestic violence against adults with disability cannot have blanket application. Disability ranges from the mild and moderate, to severe and occurs on a spectrum involving mobility, visual, auditory, cognitive and psychosocial impairments. Disabilities may also take single and multiple forms. If we are to recognise people with disabilities’ autonomy, dignity and equality, then different approaches to their protection are required which should also not conflate physical disabilities with intellectual and psychosocial disabilities. This provision does not accomplish such nuance and nor does it offer any substantive response to a *lacuna* in the law and the completion of a form is not sufficient by any stretch of the imagination (page 11).  (d) Adult persons  \* Adults, who do not lack mental capacity, should not be deprived of their decision-making powers. This equally applies to older persons. The harm potential may be heightened if compulsory reporting takes place.  \* The referral to further services is subject to a risk assessment and evaluation if there is such need. In practice, a minority of complainants seek (and need) shelter, while the majority seek and require counselling services. The routine first-line response for all complainants should be referral to domestic violence service, which may be inclusive of shelters.  \* The unguided and unrestricted use of risk assessments is not supported. Accurate risk assessment is required and must be done by trained persons.  (Pages 11 to 13)  Adults should not be deprived of their decision-making powers. Mandatory reporting have unintended consequences for persons who assist the complainant to come to terms with domestic violence. Reporting of domestic violence in respect of adults should only take place with the consent of such an adult. (Methodist Church of Southern Africa)  **MOSAIC pages 9 to 10**  The following amendments are proposed to subsection (3)*(b)*, namely:  (i) provide the complainant with a prescribed list containing the names and telephone numbers of accessible shelters, this list must not contain the addresses of the shelters  (ii) provide the complainant with a prescribed list containing the names and contact particulars of public health establishments;  .......  (iv) assist the complainant prepare a safety plan in order to help them avoid dangerous situations and to know the best way to react when they are in danger.  The reason for omission of the addresses of shelters, is to keep their location confidential to ensure the safety of the shelter users.  (MOSAIC pages 9 to 10)  **MOSAIC page 10**  It is recommended that the reference to a "person with a disability" in section 2A(1)(a) be substituted for the following reference: "who presents with a physical, psycho-social or intellectual disability that impacts on their capacity to make decisions".  (MOSAIC page 10)  **Southern African Catholic Bishops’ Conference page 4**  The sections erred by 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.  **Southern African Catholic Bishops’ Conference pages 3 to 5**  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.  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. | (a) \* Section 110 of the Children’s Act, provide for the reporting of incidents where a child is abused, neglected, or in need of care and protection, by persons referred to in that section.  \* Section 150 of the Children's Act provide for criteria to determine when a child is in need of care and protection. The applicable criteria that may apply to domestic violence are exploitation (paragraph (e); lives or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being (paragraphs *(f)* and *(g)*); is in a state of physical or mental neglect (paragraph *(h)*); or is being maltreated, abused, deliberately neglected or degraded by a parent or care giver (paragraph *(i)*).  \* In so far as it may be applicable to domestic violence, abuse is defined in section 1 of the Children's Act as assaulting or inflicting any other form of deliberate injury to a child; sexually abusing a child or allowing a child to be sexually abused; bullying by another child; and exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally.  \* Social workers are mainly responsible for the implementation of Chapter 9 of the Children's Act. If a report is made to a social worker, the social worker is responsible to investigate whether the child is in need of care and protection, may remove the child to temporary safe care in terms of sections 151 or 152, an may invoke the children's court process in Part 2 of Chapter 9.  \* Reporting to the SAPS, ensures that they can use the powers in the Children's Act to provide protection to a child in need of care and protection (see section 152 – removal of child to temporary safe care without court order); removal of offender to whom a report in section 110(1) or (2) or a request contemplated in 110(7) has been made, from the home or place where the child resides  \* The commentator is correct that the Children’s Act, comprehensively deal with the position of children and that section 2A may for that purposes not be needed. However, the directives in the proposed section 18B (clause 22), aims to oblige various Departments to provide additional services to victims of domestic violence that are may not be included in the provisions of the Children's Act.  The proposed section 2A will be amended to deal with child victims of domestic violence in accordance wild the Children's Act and with the retention the directive to provide additional services to child victims.    (b) \* Without discussing the Chapter 5 of the Older Persons Act, in detail (see, sections 25 – criteria to determine when an older person in need of care and protection; 26 - duty to report suspicion of abuse; 27 – immediate SAPS intervention to remove offender; 28 – court proceedings to enquire into abuse; 29 - enquiry into abuse of older person and orders to protect older person; 30 – offences relating to older person abuse; and 31 – register of abuse of older persons), the Department agrees with the commentator. However, the directives in the proposed section 18B (clause 22), aims to oblige various Departments to provide additional services to victims of domestic violence that are may not be included in the provisions of the OPA.  The proposed section 2A will be amended to deal with older person victims of domestic violence in accordance wild the OPA and with the retention the directive to provide additional services to such victims.  (c) \* The Department agrees with this comment. Although ‘disability’ is defined as a physical, mental, intellectual or sensory impairment which prevents a person having such an impairment from operating in an environment developed for persons without such an impairment, various persons that have the mental capacity to make their own decisions.  \* The Department agrees with the comments that applicable legislation do not adequately afford protection against abuse for this category of persons (see among others the Mental Health Care Act 17 of 2002 – which criminalise the neglect, abuse or to treat a mental health care user in any degrading manner or allows the user to be treated in that manner (sections 11 and 70)). Similar provisions as those in the Children's Act and OPA outlined above, must form part of such legislation. This cannot be addres in the Bill and separate legislation must be promoted by the responsible Department.  \* To clarify an aspect, physical, psychosocial, intellectual and other disabilities or conditions may have the effect that such a person's ability to function in society and to fend for themselves against abuse are reduced to the level of a child or older person, who are afforded statutory protection against abuse.  \* The definition of disability and the proposed section 2A will be revised to address the concern of over broadness.  (d) \* The mandatory reporting of domestic violence in respect of adults, who do not lack mental capacity or is otherwise unable to do so is problematic. This is in conflict with other laws, such as section 14 of the National Health Act, 2003, that provides for confidentiality in respect of health status, treatment or stay in a health establishment. It is further submitted that the compulsory reporting obligation may also be challenged on a constitutional basis as an unjustifiable limitation of privacy, dignity, freedom of person and dignity.  \* The compulsory reporting obligation may have a restricting effect on the seeking of treatment or other relief by victims.  \* The Department agrees with the proposed first-line response suggestion that all complainants should be referred to a domestic violence service.  \* The Department agrees with the commentator that risk assessments should be limited to qualified persons. Many functionaries, as defined, are not medical qualified personnel and their usefulness to conduct such assessments may be questioned.  \* Depending on the nature and extend of the envisaged risk assessment and the further service that may be provided, it is a general principle of law that the guardian or parent of a child must consent thereto. Consent by a guardian is equally applicable to older person that cannot consent – also see section 9 of the Health Act which reiterates this principle.  Noted  The omission of shelter addresses may be considered. It is however, submitted that it is not the responsibility of the functionaries to prepare a safety plan. Many of these functionaries will not have the expertise to do so. However, paragraph (c) of the subsection does provide referral to for further services as may be prescribed by the Directives contemplated in section 18B, which may involve a person with the required expertise. The Directives will therefore further deal with the proposed subparagraph (iv).  The proposed amendment will be taken into account in the revision of the Bill.  Noted and the provision will be revised.  Noted, these comments will be taken into account in the revision of the Bill. |

**4. Clause 3: Section 2(B): Obligations to report domestic violence and to provide information**

|  | **Comments** | **Responses** |
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| 4.1  4.2  4.3  4.4  4.5  4.6  4.7 | **Action Aid SA:**   1. The domestic violence victims do not support mandatory reporting, and feel that ‘decisions regarding reporting should be up to them, since their safety and that of their children should be first priority.   (b) Many health professionals had limited or no experience of mandatory reporting, which suggests that where mandatory reporting laws are in place, mandatory reporting tends to be under-utilized.  (c) Mandatory reporting would turn a civic duty to report domestic violence into a legal obligation, with a criminal penalty attached. A person who fails to report domestic violence, even if they were acting in good faith, could face a criminal prosecution and sentence.  (d) The Domestic Violence Act does not make domestic violence a criminal offence. Instead, a perpetrator of domestic violence can only be prosecuted if their behaviour also amounts to a criminal offence such as assault, or if they breach a protection order. In practice, convictions for violence which occurs within the context of domestic relationships are rare.  (e) Mandatory reporting would create an unfair situation where individuals who fail to report domestic violence are punished more harshly than perpetrators of domestic violence. Unless perpetrators breach the protection order, they are unlikely to face criminal sanctions, but those who fail to report could face a criminal prosecution, and a prison sentence of up to five years.  (f) A duty to report undermines a victim’s agency by removing the choice from them in respect of whether to report the abuse. To take away an adult’s ability to act in their own interests, or exercise choice, is a characteristic feature of abusive relationships. Mandatory reporting implies that the victim’s assessment of their circumstances, as well as their choices, cannot be trusted and that others understand their situations and options better than they do.  (g) Counselling and other therapeutic work with victims seeks to build the victims’ ability to trust their judgement and capacity to act in their own interests. Therefore, mandatory reporting should only apply in circumstances where the victim is hindered due to their personal vulnerabilities, from speaking out themselves.  (h) Health and psychosocial support professionals, counsellors and other therapists would need to advise their clients at the outset that confidentiality is not guaranteed. If a person reveals experiences of domestic violence, the professional or counsellor would be obliged to report this, regardless of their client’s wishes.  (i) Mandatory reporting might deter complainants from seeking help, or encourage them to withhold information if they are not yet ready to report the abuse to the authorities. This could ultimately further isolate them from support.  **ANCWL:**  The imposition of an obligation to report an act of domestic violence committed against an adult in a domestic relationship is not supported. Criminalising the failure to report acts of domestic violence may indirectly limit the agency of family and friends who do witness such acts, as they may get arrested in cases where they fail to report violence.  **Ms Busisiwe Memela**:  It is proposed that the requirement of reporting domestic violence cases at the police station should be removed, since the police are ill-equipped to handle such cases, and a social worker must be involved. For some women it is even the environment of the station itself that perpetuates the violence.  **City of Tshwane**  It is submitted that the provision seems to open loopholes to criminalize the victim who didn’t report the abuse that took place for over a period of 10 years. It will also possibly limit or reduce access to help victims with the threats of being criminally liable for not reporting abuse before. The provisions needs to be considered in a manner that does not limit, chase away or cut the services the activists give to victims or to limit and keep women in fear of reporting it late. The mandatory reporting forces the activist who are service providers to immediately report acts of domestic violence and that will drive the victims away from seeking help.  **Commission for Gender Equality**  The general mandatory reporting duty on any person is opposed. There should only be a legal duty to report a reasonable belief or suspicion that an act of domestic violence has been committed against a child. This is in line with the existing legislation for maximum protection of children who are especially vulnerable. The proposed duty, and corresponding criminal liability, is not appropriate in relation to adults as it is submitted that under no circumstances should the agency of those affected be taken away or interfered with. The law should not presume the best and safest course of action for an adult complainant, who may be weighing up complex emotional, physical and other interests. Complainants should not be forced into a legal process or into contact with legal or state officials.  **COSATU**  (a) Mandatory reporting could inadvertently undermine the survivor’s agency and their willingness to confide in others. Service providers, the state and its various agencies, including health and police, must help to empower domestic violence victims to make informed choices for themselves.  (b) The criminalisation of non-reporting of domestic violence creates a situation where individuals who fail to report could end up being punished more severely than perpetrators.  **Pro Bono.org 2A and 2B**  We welcome the proposed insertions of sections 2A and 2B in the Act. With particular reference to section 2B, however, it is our view that the content thereof requires further clarification which would best be encapsulated in regulations that flesh out the ambit of the duty to report. In this regard, we propose (without purporting to be prescriptive) that the relevant regulations would need to address, at least, the following aspects –  1 The circumstances under which the duty to report exists;  2 The degree to which the abused person's consent may be required before a report is made;  3 Possible exemptions or exceptions to the duty to report; and  4 The obligations of professionals who are bound by the prescripts of privilege and confidentiality in their relations with clients or patients (for example: mental healthcare practitioners, legal practitioners and medical practitioners).  We submit that regulations of this nature are crucial because without a proper consideration of the aforementioned issues, there may be a conflict of rights which could lead to judicial challenges to the constitutionality of the provisions.  The regulations must necessarily navigate, with substantive elaboration, a balance of the following constitutional rights, amongst others –  1 section 12 (right to freedom and security of the person);  2 section 9 (right to equal protection of the law and not to be unfairly discriminated against);  3 section 10 (right to human dignity);  4 section 14 (right to privacy);  5 section 15 (right to freedom of religion, belief and opinion – in particular, where spiritual abuse is concerned); and/or  6 sections 28(1)(b), (d) and (2) (children's rights).  Furthermore, we note that in crafting the regulations it would be necessary to consider similar provisions and their application in foreign jurisdictions (for example, the United States of America).  Further still, another practical consideration has to be the manner of policing and the very real possibility that criminalising a failure to report may inadvertently burden an already burdened criminal justice system and the South African Police Service. | 1. We are faced with a dilemma in that although victims may want to make the decision to report their own election, there are other victims who are in a situation where they are disenabled by the perpetrators from reporting their cases. Conflicting submissions have been received in this regard. Mandatory reporting may be detrimental to some victims and may also be helpful to other victims who may want to be rescued. However, it is suggested that the mandatory reporting provision be deleted from the Bill.      1. The directives to be promulgated by various departments must provide for the training of officials, and this will go a long way in ensuring that officials do get proper experience within their respective fields. 2. The approach of the Bill in this regard is to avoid bystanderism and to ensure that those who can’t act on their own are assisted timeously. However, the good faith reporting is protected from liability for civil, criminal or disciplinary proceedings. 3. The Domestic Violence Act is a civil instrument and does not criminalise actions other than non-compliance with the Act. However, criminal acts which occur within a domestic relationship can be prosecuted as such. Conviction is dependent on the evidence presented in court and that cannot be cured in the Bill. A civil and criminal process may run parallel to one another. 4. The aim of mandatory reporting was to discourage bystanderism and to intervene on behalf of victims where they have not done so. Numerous reports abound of third party’s who chose not to intervene in spite of knowledge of domestic violence with tragic consequences. If the perpetrator does not breach the protection order then the purpose of that order would have been achieved, which is to protect the complainant from acts of domestic violence. The flipside is that it may be disempowering for adult victims and even place them at greater risk. The point has been taken on board and mandatory reporting is being reconsidered. 5. The point is noted. Another person may act on behalf of the complainant with the complainant’s consent.   (g) Counselling is always available and proves to be helpful to victims. Other adults who are not under the class of vulnerable groups could also be hindered by the perpetrators from speaking out themselves, and that is where third parties are able to come to their rescue by reporting on their behalf.  (h) Those covered by privilege are not required to comply with this provision, as that would be in breach of the privilege.  (i) The comment is noted  The point is noted. Although some comments argued that mandatory reporting would discourage bystanderism and victims could be saved through mandatory reporting in some instances, it is suggested that the mandatory reporting of domestic violence against adults be deleted from the Bill.  An application for a protection order can be made directly at the nearest Magistrate’s court. It is not compulsory to report to the police station, as cases can be reported to a social worker who may report the case to the police on behalf of the victim. Reporting criminal cases at the police station cannot be removed as many victims (mostly in cases involving an element of violence) would prefer to go to the police.  The point is noted and the mandatory reporting of domestic violence against adults will be removed from the Bill.  The submissions are accepted and it is proposed that the mandatory reporting of domestic violence against adults be deleted from the Bill.  (a) and (b) The mandatory reporting provision in relation to adults and criminalisation of failure to report will be deleted from the Bill.    Mandatory reporting in respect of adults should be reconsidered. The comment made would be instructive in the development of directives and the manner in which support should be given to victims of domestic violence. |
| 4.8 | **WLC Ad 2B(1)(a)**:  WLC supports the inclusion of this clause in the Bill. This clause reflects similar clauses on the duty to report in the both the Criminal Law (Sexual Offences and Related Matters) Amendment Act and the Children’s Act. The recognition of particularly vulnerable victims and the placement of a duty on all members of society to take responsibility for their protection is supported. | The comment is noted. |
| 4.9 | **WLC Ad 2B(1)(b)**:  The WLC does not support the addition of this clause providing for the mandatory of reporting of domestic violence by an adult person where the complainant is an adult.  The rationale for this objection is reflected above at point 18.  Ad 2A(5) and 2B(4):  The criminalisation of the failure to report domestic violence where the complainant is an adult is not supported by WLC. The effect of this clause is to criminalise women who offer support, refuge, and safety to adult victims of domestic violence. Very often adult women who seek assistance and support from other women do not want the matter reported; to place confidants in jeopardy of being arrested and prosecuted for providing support and safety to victims is surely an unintended consequence of the Bill. Women victims should be able to seek assistance, advice and safety from both functionaries and ‘other adults’ without the pressure of knowing that the people with whom they are engaging are under a legal obligation to report the domestic violence to SAPS or a social worker. An additional effect of this provision is that people will be reluctant to both formally and informally assist adult victims for fear of criminalisation should they and/or the victim not want to report the violence. | The point is noted and will be taken into account in the revision of the Bill. |
| 4.10 | **WLC**  As a general comment applicable to section 3 of the Bill, it is important to align the language used regarding obligations on both functionaries and ‘other adults’. The use of terms ‘becomes aware of the fact’; ‘knowledge’; ‘reasonable grounds believes or suspects’; and ‘a reasonable belief or suspicion’ implies that there may be different meanings ascribed to ‘fact’ and ‘knowledge’. It is recommended that the terminology is standardized to be applicable to both sections 2A and 2B of the Bill.  WLC recommends the use of two standards to apply to both functionaries and ‘other adults’: those of ‘knowledge’ and ‘reasonable belief or suspicion’. | The point is noted and will receive attention. |
| 4.11 | **South African Police Service (National Commissioner)**  It is unclear what is expected of a police official where a report is received of conduct that does not amount to a criminal offence and where the victim does not want to report the matter to the police.  There are many inherent risks involved:   * Family members would be seeing as breaking the victims trust thereby affecting her support system. * Public reaction to the police arresting grief torn family members after a victim has been killed. * The victim will feel less in control as decisions on reporting are made on her behalf. * Due to reasons, including financial dependency, the victim may deny the allegations of domestic violence. * The victim may remain silent and more isolated and people who assist e.g. NGO’s and shelters will be liable for prosecution if they do not report. * An adult person may include adult children or other members of the family in the house, which may cause an escalation of violence. | The point is noted and the clause will be revisited with a view to removing mandatory reporting in respect of adults. |
| 4.12 | **Zuzukele Ndzunge (concerned citizen)**  Third parties need to be able to report violence inflicted publicly.  If I witness a person assaulting their partner I should be able to open a case.  Where there is a video or picture, audio the courts should not take long to convict. | Reporting an incidence of public domestic violence is a civic duty but not a legal obligation as pointed out in other comment. Collective public intolerance for such behaviour may cause a much needed shift in societal norms and values. |
| 4.13 | **Yvonne Wakefield: The Warrior Project**  Strongly opposed to section 2B(2)(a) and (b). Placing an obligation on a person in a position of support to report the matter will have a negative impact. | The point is noted and will be addressed. |
| 4.14 | **SAWID**  SAWID has reservations on the mandatory reporting clause as it relates to adults and suggests that the autonomy and agency of complainants be respected. The likelihood of a person who fails to report being criminally charged, may well go against the objects of doing away with ‘by-standerism’ and deter members of the community, family members, friends and colleagues from assisting the complainants. | The point is noted and will be addressed. |
| 4.15 | **Wise 4 Afrika**  A standardized prescribed form for reporting must be widely available in all official languages and easily accessible through government buildings, commercial sites, schools, community buildings, etc.  A Whistleblower/Reporting line must be enabled for voice reporting to ensure inclusion of those who may not be able to write, including but not limited to electronic voicenote facilities. | Based on the cogent arguments against mandatory reporting the view is held that the deleterious effect on the victims themselves cannot justify the inclusion of this provision. |
| 4.16 | **Lisa Vetten**  (a) Children and older persons  The Children's Act and the Older Persons Act cater for this and the commentator's comments in respect of the proposed section 2A equally applie to the reporting obligation in terms of the proposed section 2B.  (b) Adults  Third parties reporting of instances of domestic violence, when this is not at the explicit request of the complainant, are not supported for various reasons, among others:  \* Health, counselling and other emotional and psychological support services are offered and accepted on the basis that they are confidential. The provision changes this and a service provider is obliged to report knowledge of domestic violence. This may be either to deter complainants from seeking help, or to withheld important information, and ultimately further isolate them from support.  \* It may result in victim criminalisation, for instance, a mother who fails to report domestic violence against herself or a child.  \* It may discourage assistance by other persons to a complainant, since the incident must be reported. For instance, if a friend is approached to provide advice or assistance after an incident of domestic violence he or she must report any knowledge that an act of domestic violence has been committed against the complainant to a social worker or the SAPS.  (Pages 11 to 13) | (a) See responses under paragraph 3.10, above.  (b) The Department agrees that the reporting requirement may have the unintended consequences pointed out by the commentator. |
| 4.17 | **LRC page 7**  Section 2B(1)*(b)* must be amended to provide for the reporting of domestic violence against "any person", so as not to exclude children, older persons and disabled persons. | The commentator did not consider the provisions of paragraph (a) of Section 2B(1)*(b)*, which imposes a reporting obligation in respect of children, older persons and persons with disabilities. |
| 4.18 | **Methodist Church of Southern Africa; MOSAIC page 10**  Adults should not be deprived of their decision-making powers. Mandatory reporting have unintended consequences for persons who assist the complainant to come to terms with domestic violence. Reporting of domestic violence in respect of adults should only take place with the consent of such an adult. | This proposal will be taken into account in the revision of the Bill. |
| 4.19 | **MOSAIC page 10**  It is recommended that the reference to a "person with a disability" in section 2A(1)(a) be substituted for the following reference: "who presents with a physical, psycho-social or intellectual disability that impacts on their capacity to make decisions". | This proposal will be taken into account in the revision of the Bill. |
| 4.20 | **Southern African Catholic Bishops’ Conference page 4**  The sections erred by 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. | Noted and the provision will be revised. |
| 4.21 | **Southern African Catholic Bishops’ Conference pages 3 to 5**  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.  It is recommended 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. | Noted, these comments will be taken into account in the revision of the Bill. |

**5. Clause 4: Section 3 (Arrest by peace officer without warrant)**

|  | **Comments** | **Responses** |
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| 5.1 | (a) **ANCWL**  Consideration must be given to the ability or inability of peace officers and members of the South African Police Service to implement laws. Systematic inhibitions remain of critical concern.  (b) **Commission for Gender Equality**  It is submitted that the exercise of any discretion to arrest, in the context of domestic violence, has historically not been exercised with great care or sufficient conscientisation. The concern is that, without a progressive commitment to advanced training and guidelines for exercising this discretion on the scene domestic violence, the clause may lead to unintended negative consequences. | Re (a) and (b): Training of police is necessary and will be carried out continuously by the Police Ministry. Training is an important component of the National Instructions and SAPS standard operating procedures. |
| 5.2 | **Sithembile Mqadi, HP Attorneys**  \* Suspects should not be granted bail as they go out and terrorise and bully the victims  \* Spouse/Partner killers deserve the death penalty because 24hours in a prison equates to 2 day which means they stay a shorter time, get released on good behaviour and repeat the same offence | These aspects are relevant to the object of the Act. |
| 5.3 | **Thembi Msane**  The proposed sections 3 and 3A, that allow peace officers to effect arrest without a warrant, and to enter premises without a search warrant if there is a reasonable belief that a crime of domestic violence is being committed, are necessary. | The comment is noted. |
| 5.4 | **South African Police Service (National Commissioner)**  This proposal has the effect of allowing a person who is not a respondent or in a domestic relationship with the victim to be arrested for an act of domestic violence, expanding the reach of the Act further with serious implications. The offence does not have to have been committed in the presence of the peace officer.  The mandatory arrest for physical abuse may have unintended consequences e.g. where a victim uses a defensive action causing physical abuse, then both would need to be arrested. This would cause further trauma to children, who may need to be placed in protective custody if both parents are arrested.  Given the often volatile nature of domestic disputes this provision may be used by perpetrators of domestic violence to further humiliate their victims. The only option would be for a victim to remain passive in such circumstances to avoid being arrested. | It is suggested that the re-inclusion of the word ‘respondent’ would remedy the concern. As the proposal stands, a discretion is provided to a peace officer to make an arrest where an act of domestic violence which constitutes an offence has been committed, presumably recently being committed or in the process of being committed.  The proposal of a mandatory arrest allows for the arrest of “**a person** who is reasonably suspected of having committed …”. While this may be construed to apply to both parties where physical violence is involved, it could also be construed to apply to the primary actor. A victim would not be arrested for defending herself. The circumstances would dictate the approach to be followed. The fact that children are exposed to both parents in such a volatile situation calls for external intervention to address the primary trauma of being exposed to acts of domestic violence making their environment unsafe. |
| 5.5 | **Pro Bono.org**  The insertion of the words "or in the vicinity of the area surrounding the scene" (or some reasonable variation thereof) after the word "scene", should be considered.  This is because to limit the authority to arrest only to the scene of an incident of domestic violence does not take into account the basic reality that a respondent may flee the scene to some nearby (or other) location, before a peace officer arrives at the scene. In our view there is no reason why a peace officer should not be authorised to arrest a respondent where, for example, such respondent flees a scene, their whereabouts are known (or at least, readily ascertainable), and there were witnesses who can confirm or offer proof that the incident of domestic violence indeed took place. Arresting such an individual would prevent possible continued abuse by the respondent at a later stage when the peace officer has left the scene. In fact, where a respondent becomes aware of the fact that a peace officer was called to, or attended at the scene, that may anger and/or aggravate them to retaliate against or further abuse the complainant. It goes without saying, however, that a peace officer's authority in this regard (which must necessarily be based on a reasonable suspicion), must not be exercised recklessly or irresponsibly. | The general principles relating to section 40 of the Criminal Procedure Act, 1977, which provides for arrest without a warrant will apply. The courts have already interpreted the ambit of the powers of peace officers in this regard. |
| 5.6 | **Lisa Vetten, page 13; MOSAIC page 15 (section 3(1))**  The arrest of a person whom a peace officer "reasonably suspects" of having committed the offences in paragraphs *(a)* and *(b)* of the subsection, is regarded as highly discretionary and requires further clarification. | Section 40(1) of the Criminal Procedure Act authorises the arrest of a person without a warrant, who a peace officer reasonably suspects of having certain offences (see paragraphs *(a)*, *(g)*, *(h)*, *(m)*, *(n)* and *(q)*). A specific meaning is assigned to "reasonably suspects" in criminal law. The question as to whether the suspicion of the person effecting the arrest is reasonable, must be approached objectively (MVU v MINISTER OF SAFETY AND SECURITY AND ANOTHER 2009 (2) SACR 291 (GSJ) at [9]; MINISTER OF SAFETY AND SECURITY AND ANOTHER *V* SWART 2012 (2) SACR 226 (SCA) at [20]). The circumstances giving rise to the suspicion must be such as would ordinarily move a reasonable man to form the suspicion that the person has committed an offence (R v VAN HEERDEN 1958 (3) SA 150 (T) 152); S v REABOW 2007 (2) SACR 292 (E) at 297c–e). |
| 5.7 | **LRC page 7**  The word "may" in section 3(1) must be replaced with the word "must" to make it obligatory to arrest. | An arrest make severe inroads of various constitutional rights and a discretion must be afforded to a peace officer whether, it is in the circumstances necessary to arrest a person. Section 40(1) of the Criminal Procedure Act, similarly afford a discretion to a peace officer to arrest a person without a warrant. |
| 5.8 | **Lisa Vetten, page 14; MOSAIC page 12 (section 3(2))**  (a) There are other acts of violence (criminal offences) including assault, indecent assault, assault with the intent to do grievous bodily harm, rape and other sexual offences, attempted murder, malicious damage to property, pointing a firearm or crimen injuria. It is suggested that arrest should also occur under other circumstances. Section 3(2), must therefore amended to include, sexual violence, stalking, harassment, intimidation or a threat where a dangerous weapon is involved.  (b) Section 3(2) must be amended to include the offence of damage to property. | (a) Most of the offences referred to is included in Schedule 1 of the CPA and a peace officer can therefore, in terms of section 40(1) of the CPA, arrest a person without a warrant of arrest as contemplated in section 43 of the CPA. A private person can also arrest a person for a Schedule 1 offence without a warrant of arrest, in terms of section 42 of the CPA. This need not be include in section 3(2) since it is catered for in the CPA. Stalking and harassment is not regarded as offences under law and a person can therefore not be arrested for such conduct.  (b) This may be considered. Malicious injury to property is included in Schedule 1 of the CPA and a peace officer may (the peace officer has a discretion) arrest a person whom he or she reasonably suspects of having committed an offence referred to in Schedule 1. However, compulsory arrest for minor offence may be problematic in light of case law. |
| 5.9 | **M Wamua first page (section 3(3)*(b)*)**  The commentator refer to the qualification in paragraph *(b)*(ii) and (ii), (and similar qualification in section 2 of the DVA and 2A), and remark that, it will in most instances not be possible to provide a notice in the language of the complainants choice. The commentator further indicates that literacy and knowledge of the subject matter are problematic in rural areas, and explanations are therefor necessary. | This comment is noted. It is submitted extensive public education and training is necessary to provide foe the effective implementation of the GBV-legislation. |

**6. Clause 5: Section 3A (Entering of private dwelling for purposes of obtaining evidence)**

|  | **Comments** | **Responses** |
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| 6.1 | **ANCWL**  (a) Provisions should be added to extend the conditions for entering a private dwelling beyond physical violence. The police should be entitled to enter a private dwelling if they receive a report that an offence has been committed containing sexual abuse, emotional, verbal, or psychological abuse, economic abuse or intimidation, harassment, damage to property, elder abuse, coercive and/or controlling behaviours.  (b) It is proposed that to mitigate against acts of unjustified police infringement of privacy, such reports much be supported by evidence. | (a) The purpose of the provision is to enable the police entry into private dwelling for the obtaining information in relation to behaviour involving physical force intended to hurt, damage, or kill someone or something. These acts amount to assault or damage to property which are criminal offences.  (b) It is anticipated that the police will exercise this right of entry where there is evidence of physical violence. |
| 6.2 | **Commission for Gender Equality**  The good intentions behind clause 3A dealing with entering private dwellings, but it is not certain if clause 3A will withstand constitutional scrutiny. | The concern is noted. However, it is submitted that the provision will withstand constitutional scrutiny. |
| 6.3 | **South African Police Service (National Commissioner)**  This provision is welcomed. | The support of this clause is noted. |
| 6.4 | **Lisa Vetten page 14; MOSAIC page 15**  The use of the words "reasonably suspects" in paragraph *(b)*, is highly discretionary and need further clarification. | As pointed out above in paragraph 5.6, the words "reasonably suspects" have a fixed meaning, in criminal law, and will equally apply to section 3A(1) – also see NDABENI v MINISTER OF LAW AND ORDER 1984 (3) SA 500 (D) |

**7. Clause 6: Section 4 (Application for protection order)**

|  | **Comments** | **Responses** |
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| 7.1 | **ANCWL:**  (a) It is proposed that the word ‘material’ be removed from section 4(3)*(a)*.  (b) It is proposed that the application of protection orders for gender based violence be prioritized in courts as the chances of the perpetrator coming back to continue with the abuse are very high. | (a) The word ‘material’ has been in the section from its enactment, and is not a new amendment brought about by the Bill. The Protection From Harassment Act has a similar provisions.  (b) Section 4(7) already provided that the application must be submitted to the court **forthwith/immediately**. Section 5(1) provides that “the court must as **soon as is reasonably possible** consider an application” and 5(2) provides for an interim order where there may be undue hardship where a protection order is not **issued immediately**. This is despite the respondent not having a chance to reply at that stage. This would optimally happen on the same day. These provisions indicate a sense of urgency attached to domestic violence cases. However, the Bill cannot dictate to the courts to put aside other cases and deal with gender based violence cases. The courts will manage the prioritisation of matters on their own. |
| 7.2 | **Commission for Gender Equality**  Lay-persons may not be aware of the arrangements in respect of after-hours availability of courts, and the right to access courts after-hours as provided in section 4(5). It is submitted that brief mention must be made of how to access a court at these times, in accordance with existing legislation. After-hours processes must be open to complainants from rural areas who may have travelled far to reach their nearest Magistrates Court, and who arrive outside of normal court hours. | It is not necessary to include this proposal in the Bill as this is covered by educational drives undertaken to teach the nation about new laws. Non-legislative initiatives linked to advertising and educational material would be necessary to familiarize people with the procedures to be followed. The entry point regarding after hours applications would arguably be the police or social workers as these would be brought as a matter of urgency. This would be dealt with in the regulations, directives, instructions and SOPs. An application may not physically be processed at the court and travelling to the court would not be apposite or advisable. |
| 7.3 | **Thembi Msane**  The sections dealing with protection orders are also comprehensive enough, and we are in support of these amendments | Noted |
| 7.4 | **South African Police Service (National Commissioner)**  The Service welcomes and supports online applications. | Noted |
| 7.5 | **Wise 4 Afrika**  “Application for protection order” Section 4(3)*(a)* on bringing application on behalf of complainant should include:  \* NGO registered with Department of Social Development; and  \* a peace officer making an arrest. | If the person has a material interest and the complainant has provided written consent an application could be made on behalf of the complainant. |
| 7.6 | **WLC**  Ad section 4(3)(a):  WLC recommends that a definition of ‘material interest’ be included in the Bill  Ad section 4(7):  (7) The application and affidavits must be lodged with the clerk of the court who **[shall forthwith]** must **[immediately]** on the same day submit the application and affidavits to the court.”. | As this is not a new insertion it is argued that the dictionary meaning would apply, which connotes an important or substantial interest.  While it would be highly beneficial for applications to be lodged on the same day, this may not be possible. Where an electronic application has been made during the night, it may only be submitted the next day. The standard of requiring immediacy translates to the first possible opportunity to do so. |
| 7.7 | **Lisa Vetten, page 15**  (a) The amendments to expedite applications for protection orders are commended. However, the commentator is concerned as to the commitment from the court to avail itself to deal with applicants after hours.  (b) Although online application may facilitate protection order applications after hours for some, other person that who do not have access to the internet will be excluded from this intervention. After hours applications, in person, should therefore be prioritised and regulations should be made to specify definite time-lines to deal with such applications. | (a) The Directives to be issued in terms of the proposed section 18A, may specifically regulate the obligation of clerks of the court to avail themselves to deal with applications outside ordinary court hours. Those directives must provide that adequate disciplinary steps must be taken against a clerk of the court who fails to  comply with any directive. The Chief Justice may in terms of section 8(3) of the Superior Courts Act, 2013, issue prescripts to regulate the availability of magistrates.  (b) Noted. |
| 7.8 | **LRC page 8: MOSAIC page 12**  Online applications are supported, given the broad areas of some magistrates' courts and safety of complainants. | Noted |
| 7.9 | **LRC, page 8**  In respect of section 4(3)*(b)*, it is recommended that the categories of persons who is unable to consent should specifically be provided for. It is recommended that such persons are a minor, a person with a mental illness; a person who is unconscious, and a person who has been certified by a competent court as being unable to give consent. | The proposed categories of person are limited and it is submitted that the inability of a person to give consent must be considered on merits on a case-by-case bases. Other categories of persons may include severely traumatises persons, persons with intellectual disabilities, etc. |
| 7.10 | **LRC, page 8**  Section 4(6) must be amended to make it mandatory that affidavits of persons having knowledge of the matter must accompany the application. | Although it is preferable that affidavits of persons having knowledge of the matter should accompany the application, it is not always practical to do so due to the urgency of the application or the fact that such person is not available or willing to provide an affidavit. |
| 7.11 | **Southern African Catholic Bishops’ Conference page 6**  Online applications make it easier for complainants to apply for protection orders. This is supported | Noted |
| 7.12 | **SAWID**  In terms of the Bill, the application referred to in subsection (1A) “…may be brought outside ordinary court hours...” SAWID is concerned that there is no firm indication on whether magistrates will be available outside of the said ordinary court hours. The Commission for Gender Equality in its Monitoring report has highlighted that magistrates are not always available to assist complainants outside of normal court hours and raised a concern that issuance of protection orders during emergencies limits accessibility and remains a challenge to many complainants. **Recommendation:** SAWID recommends that the proposed change includes a firm indication that magistrates will be available to assist complainants that may want to apply for protection orders after hours. | See response, supra, paragraph 7.7. |

**8. Clause 7: Section 5 (Consideration of application and issuing of interim protection order)**

|  | **Comments** | **Responses** |
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| 8.1 | **ANCWL**  It is proposed that the word ‘reasonable’ in section 5(1) be substituted with a specified time period. | The provision essentially means without unreasonable delay. To specify a time frame may be problematic as the courts normally have many cases to deal with. |
| 8.2 | **Commission for Gender Equality**  It is proposed that to avoid confusion and to create certainty and clarity, ‘peace officer’ in the Bill should simply refer throughout to a member of SAPS, as in practice it is members of SAPS who are tasked with service of interim orders. | The proposal is not supported. A "peace officer" includes any magistrate, justice, police official, correctional official and it is not intend in the Bill to confine specified activities to a member of SAPS. |
| 8.3 | **COSATU**  The processes of obtaining protection orders must be expedited and mechanisms must be developed to guard against delays caused by perpetrators missing court dates, amongst other delaying tactics. | Clause 6 (section 4(7), obliges the clerk of the court to submit the application immediately to the court, and section 5(1) of the Act already provides that the court must as soon as is reasonably possible consider the application. Clause 9 tightens the provisions dealing with non-attendance at court by the complainant, respondent or both. |
| 8.4 | **South African Police Service (National Commissioner)**  (a) There must be some proof of service on the respondent. If the police arrest without proof of service they will be liable to civil claims.  (b) No mention is made of an obligation on the clerk of the court to ensure that interim protection orders and warrants of arrest are forwarded to the complainants preferred police station. It is proposed that an additional section be included, similar to the provision in clause 9 (which proposes the amendment of section 6(6)*(a)*.) | (a) Noted.  (b) This may be considered during the revision of the Bill. |
| 8.5 | **Stuart McDonald (concerned citizen)**  The Domestic Violence Act is often used by the legal profession during acrimonious divorce proceedings to deny access to a child by one of the parents (usually the biological father) based on false and “pillow case” talk allegations. This deliberately alienates the father from the child; delays the divorce and escalates the costs.  The commentator suggest the inclusion of a provision that any denial of contact and access and alienation be considered an act of domestic violence, to be defined as emotional, financial and psychological abuse. | It is not advisable to prescribe to the court what orders may or may not be made in the best interests of a child affected by domestic violence. However the reprehensible abuse of process by some divorce attorneys needs to be addressed. Section 15 provides for costs orders against any party if they have acted frivously, vexatiously or unreasonably. It is recommended that this behaviour be brought to the attention of the court. |
| 8.6 | **Pro Bono.org**  Section 5(3)(d)(iii) makes reference to "applicant". In light of the fact that the word "applicant" does not appear at all anywhere in the Act (or in the Bill), and to avoid the dissonance that this difference in terms may create, we recommend that "applicant" in this section be substituted by "complainant"(which is specifically defined in section 1 of the Act). | The comment is noted and the amendment will be effected. |
| 8.7 | **Wise 4 Afrika**  (a) Interim protection orders must be issued on the spot once the police respond to a domestic violence call. The Police must remove the perpetrator and a 14 day return date must be given for the parties to appear in court for a final protection order.  (b) In order to help mitigate the burden of locating and identifying the accused by the victim, we recommend that the government use all electronic data at their disposal to build effective, efficient and collaborative systems. Courts should have access to the Home Affairs database to retrieve the most recent official image of the accused - if taken in the past 5-10 years, this can be used to assist the officer with identification. This may require an update to Home Affairs forms to disclose that the image could be used for such purposes. Essentially everyone with an ID and/or who has entered the country in the past five (5) years should have a picture and fingerprint deposited with Home Affairs. Additional databases such as SARS electronic contact should be available for gathering contact information should an electronic delivery be necessary. | (a) **In some countries, police officials may issue provisional orders at the scene of domestic violence to ensure immediate protection. Section 27 of the Older Persons Act and section 153 of the Children's Act, provide for such orders. It is submitted that similar powers should in terms of section 2 of the Act be afforded to specific designated members of the SAPS. This aspect will be considered during the revision of the Bill.**  (b) The obtaining of the information, as contended for by the commentator must be authorised in terms of a law. The provisions of the POPIA must also be considered. In the context of the Act, the parties are in a domestic relationship and such drastic powers to locate the respondent are in general not necessary. |
| 8.8 | **WLC**  (a) WLC welcomes the amendments in sections 5(3)(a) and 5(4) which now require, respectively, the clerk of the court to inform the complainant once the interim protection order is issued or if it is not issued. WLC considers this one of the most important interventions in the Bill in achieving access to justice for complainants. It is essential that a process and practice of informing complainants immediately of the outcome of the application is regulated by the Regulations. This process must include telephonic or electronic communication methods to communicate the outcome to the complainant on the same day as the interim order is either issued or not issued.  Technically, in terms of the Act there are no provisions to inform complainants of the outcome of their application in terms of section 5 other than in terms of section 5(7) if an interim order is issued, and then only once it has been served on the respondent. This is a serious *lacuna* in the law. It allows for the informal practices that have developed in many courts, as well as leaving the complainant without any recourse for the time period between the lodging of the application for an interim order and either the serving of a copy of the interim order in terms of section 5(7) or the return date in terms of section 5(4).  WLC therefore welcomes the proposed amendments to the Act which require the clerk of the court to notify the complainant immediately upon the court issuing of an interim protection order (section 5(3)(a)), and secondly, requiring the clerk of the court to notify the complainant immediately if the court does not issue an interim protection order (section 5(4)).  In addition to notifying the complainant of the outcome of the application, the clerk must also inform the complainant of the provisions of the interim order as well as the return date  The amendments are silent on the manner in which complainants must be notified by the clerk of the court in terms of amended sections 5(3)(a) and 5(4). It is recommended that this notification is done immediately i.e. on the same day that the interim order is issued or the notice to show cause is issued, and that notification is done by telephone, SMS, and email (electronic notification), followed by the formal service in terms of section 5(3)(d)(iii)).  (b) The WLC further recommends that the Act be amended to make provision for the processing of applications in terms of sections 4 and 5 to be completed on the same day as the application is lodged. Complainants must be informed while they are still attending at court as to the outcome of the application. If the interim order is issued, a copy of the order, together with the warrant in terms of section 8 must be handed to the complainant. The documentation must clearly state that the interim order has no force or effect until it has been brought to the attention of respondent in compliance with the proposed amended section 5(6). This is a process that is already utilized informally in many of the courts and negates the need for women to attend at courts / contact courts in the days following the lodging of the application. It also ensures that women are made aware immediately of the outcome of their application. If the interim order is not issued, the complainant must be handed relevant documentation with the details of the return date. | (a) The regulation of the notification process by means of regulations may be considered.  (b) To deal with protection orders on the same day is dependent on the workload of a magistrate's court. |
| 8.9 | **LRC page 9**  Section 5(5): It is recommended that the word "may" in subsection (5) be substituted to provide as follows:  “The return dates referred to in subsection (3)(c) and (4) **[may]** must not be less than 10 days after service…” | It is submitted that the word "may" is to be interpreted as mandatory and need not be substituted with "must". |
| 8.10 | **MOSAIC pages 12 and 13**  The electronic application process is supported. It is proposed that section 5 be amended to ensure that an application must be considered by the court on the same date that it is received. | It is submitted that it will be unreasonable to put obligations on the judiciary to consider applications in all circumstances on the day of receipt. There are various magistrate's courts which have personnel restraint, both in respect of clerks of the court and magistrates. |

**9. Clause 8: Section 5B (Electronic communications service provider to furnish particulars to court)**

|  | **Comments** | **Responses** |
| --- | --- | --- |
| 9.1  9.2 | **ANCWL:**  The interim protection order may be issued within a reasonable time, but a victim who is being telephonically harassed and/or stalked has no immediate recourse as the police will not open a case of harassment, and the electronic communications service providers refuse to assist a victim unless there is a court order.  **Centre for Child Law:**  (a) It is submitted that the power in clause 5B(1)*(b)*(iv) and (v) to request "any information" may be subject to abuse and could potentially be challenged on the grounds of the violation of the right to privacy. It is imperative that clarity be given on what this other information may include, and such clarity could be provided in the Act or the regulations.  (b) It is suggested that extreme care be taken in the implementation of the proposed provisions of clause 5B(10) relating to the costs of electronic communication. Many complainants, which include children, may not be in the financial position to pay for services offered by the communication service providers. It is important to ensure that complainants are provided with support in this regard to prevent any barriers to access to justice. In light of this, it is recommended that a provision for waiving of such fees be inserted.  (c) It is proposed the insertion of subsection (iii) for the waiver of fees to read:  "(iii) fees payable by the complainant may be waived if it is found that the complainant is unable to pay the costs involved.".  (Regarding paragraphs (b) and (c) also see the comments of M Wamua page 2) | The reality is that there must be an incident which the victim must be protected against in the form of a protection order. Until then, a protection order cannot be issued. Other remedies (depending on the facts of the case) outside the Domestic Violence Act, such as opening a case for impairment of dignity, defamation, *crimen injuria* *etc*. If a criminal case is opened, the SAPS may in appropriate circumstances make use of section 205 of the Criminal Procedure Act, to obtain call-related information necessary as evidence to such proceedings.  (a) The provisions are qualified to obtaining information regarding the person who disclosed the communication or the electronic communications service who disclosed the communication. The regulations will regulate this aspect in detail. It must be pointed out that that a court cannot obtain the content of a communication since it is prohibited by the RICA. The obtaining of call-related information takes place in terms of the Protection of Harassment Act and section 205 of the Criminal procedure Act, and the new provision does not expand on those laws.  (b) and (c): Section 5B(10)(b), provides that a court may hold an enquiry to determine the ability of the complainant to pay the costs, and the State may be liable for such costs. The costs in question, are recoverable in terms of subsection (10)*(c)*, from the respondent. The afore-mentioned provisions cater for the suggested amendment in paragraph (c). |
| 9.3 | **Southern African Catholic Bishops’ Conference page 6**  Emotional and psychological abuse, as well as intimidation, is increasingly occurring through electronic communications, especially cellular phones, and it is fitting that the principal Act should be updated to take this into account. The provision is supported. | Noted |
| 9.4 | **WLC; M Wamua page 2**  Ad section 5(B)(10): Although section 5B(10) makes provision for an inquiry by the court to determine the ability of the complainant to pay said costs, the point of departure in the Bill presumes the complainant is liable for the costs, and the burden to prove that she is not able to afford the incurred costs rests on the complainant. It is recommended that the Committee must reconsider this provision with a view that the State should be liable for such costs. | Noted. |

**10. Clause 8: Section 5C (Existing orders or reciprocal orders )**

|  | **Comments** | **Responses** |
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| 10.1 | **South African Police Service (National Commissioner)**  The provision is supported | Noted |
| 10.2 | **Lisa Vetten, page 15**  The clarification of the duty of the court in respect of existing or reciprocal orders and the alignment with the Magistrate Guidelines for the Implementation of the Domestic Violence Act (2008), are welcomed. An amendment to subsection (2) is proposed to provide that where it has been established that a previous protection order is in place, it is recommended that where the original application has not been finalized, an attempt should be made to hear the parties together. A notice to show cause of what should be issued and the return dates amended accordingly. | The proposal will be taken into account during the revision of the Bill. |
| 10.3 | **LRC page 9**  The LRC recommends that subsection (1)*(c),* be amended to make it obligatory to issue a protection order, in the circumstances provided for in that in that subsection – the proposal recommend the substitution of the word "may" with "must" at the beginning of the provision. | This cannot be supported, since the provision is of such a nature that the court must exercise discretion in respect of other existing orders in place. |

**11. Clause 9: Section 6 (Issuing of final protection order)**

|  | **Comments** | **Responses** |
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| 11.1 | **Lisa Vetten; MOSAIC page 13**  (a) Section 6(2B)(iii): The commentator is of the opinion that a matter should never be discharged when neither the complainant nor respondent are present on the return date for the first time, where an interim protection order was issued (section 5(3)). The matter should only be discharged on a second or subsequent non-appearance by both the complainant and respondent.  (b) Section 6(2C): Where no protection order has been issued and the matter is set down for hearing, the matter should not be discharged when neither the complainant nor respondent are present on the return date for the first time. Such discharge should only be considered on a second or subsequent non-appearance by both the complainant and respondent. | (a) The court has a discretion to discharge the matter under section 6(2B)(iii) and (2C). The Department is of the opinion that where subsection (2B), applies, an amendment may be considered to make discharge dependant on a second or further non-appearance. In terms of the proposed amended section 5(8), the protection order remains in force until set aside by the court.  (b) Subsection (2C) applies to a matter where an interim protection order was not issued on the basis of an application in terms of section 5. An amicable solution to address the proposal of the commentator may be to remove the matter from the roll. This can, however, not apply in respect of section 6(2B), due to the interim protection order that will remains in force. |
| 11.2 | **Pro Bono.org**  (a) A spelling error, requiring correction, appears at section 6(2) where the word "oppose" is incorrectly spelt as "opose".  (b) With reference to the proposed amendment to section 6(3) of the Act, it is submitted that the deletion of the word "just" (just or desirable) in that provision is not good form. In the context of this provision, the word "just" is necessary as it serves to qualify the manner in which the discretion of the presiding officer should be exercised when granting the order concerned.  The deletion of the word "just" suggests that presiding officers are permitted to make orders that are not just; which proposition is simply bad in law. Any order made by a court should at the very least aim to achieve justice or to further the aforementioned social justice ambitions. We therefore strongly recommend that the word "just" be retained in that provision.  With the above in mind, we recommend the following wording for the relevant portion of section 6(3) –  *"The court may, on its own accord or at the request of the complainant or related person****, and if it is in the interests of justice to do so,*** *order that in the examination of witnesses, including the complainant or related person, a respondent who is not represented by a legal representative…"* | (a) The printing error will be corrected.  (b) It is submitted that a presiding officer must exercise a judicial discretion in matters before him or her. In DIRECTOR OF PUBLIC PROSECUTIONS, TRANSVAAL v MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND OTHERS 2009 (2) SACR 130 (CC) at paragraph 120, the following was said about judicial discretion:  'The importance of judicial discretion cannot be gainsaid. Discretion permits judicial officers to take into account the need for tailoring their decisions to the unique facts and circumstances of particular cases. There are many circumstances where the mechanical application of a rule may result in an injustice. What is required is individualised justice, that is, justice which is appropriately tailored to the needs of the individual case. It is only through discretion that the goal of individualised justice can be achieved. Individualised justice is essential to the proper administration of justice. As Dean Pound pointed out some 50 years ago:  (I)n no legal system, however minute and detailed its body of rules, is justice administered wholly by rule and without any recourse to the will of the judge and his personal sense of what should be done to achieve a just result in the case before him.'  **The amendment proposed by the commentator is acceptable and the provision will be amended accordingly.** |
| 11.3 | **WLC**  WLC supports these amendments. | Noted. |
| 11.4 | **LRC page 9**  Substitute the word "respondent" at the end of the paragraph with "witness". | Agree – the court must repeat the question to the witness and not the respondent. **This will be corrected.** |
| 11.5 | **LRC page 10**  Section 6(5)*(b)*: It is suggested that the paragraph be amended to provide that the final protection order must be served upon the respondent, within 48 hours after it is issued by the court, in order to ensure that protection is afforded to the compliant as soon as possible. | This may be considered. However, service is dependent on the availability of the designated persons who is entitled to serve the protection order and in some instances this may take longer than 48 hours. |
| 11.6 | A possible omission in section 6, is the non-inclusion of a similar provision as contemplated in section 5(6), namely, that the protection order is of force and effect from the time the existence and content of the order have been brought to the attention of the respondent. This will be considered during the revision of the Bill. |  |

**12. Clause 10: Section 6A (Establishment of an integrated electronic repository for domestic violence protection orders and related matters)**

|  | **Comments** | **Responses** |
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| 12.1 | **South African Police Service (National Commissioner)**  The provision is supported. | Noted |
| 12.2 | **SAWID**  The provision is supported. It is, however, proposed that all applications, online and physical copies be translated into all the official languages to ensure accessibility. The State has created institutions such as PANSALB together with the Department of Arts and Culture, who should be requested to translate materials for services provided by the State. SAWID therefore, welcomes the introduction of the ‘integrated electronic repository’ as this will go a long way in reducing the administrative burden of the SAPS and the Courts and do away with the notion of ‘misplaced/lost documents’. This will hopefully alleviate the current situation the country finds itself in as far as lack of data is concerned on gender-based violence matters and in turn comply with CEDAW Committee recommendations. | Noted |
| 12.3 | **Pro Bono.org**  We welcome the intended introduction of secure online submissions and an integrated electronic repository.  In our view, however, it is necessary to provide further clarity on how this system is expected to work (perhaps in regulations), and to train all persons who are expected to regularly interact with the system. Whatever form the clarity takes, it would need to answer at least the following questions:  1 Who are the "officials in the criminal justice system" referred to section 6A(3)?  2 Who is expected to have access to the system or repository?  3 Will legal practitioners be able to access the repository?  3.1 If so, how (and will they be provided with the necessary training)?  3.2 If not, why?  4 What security measures or failsafe mechanism are there to ensure information remains confidential?  5 By when will the repository be established?  We note that it is also crucial that the establishment and implementation of the repository be done in such a way that there is no dissonance with section 15(2)(a) of the Act, which states that: *"No person may publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings."* |  |
| 12.4 | **WLC**  WLC supports these amendments. | Noted |
| 12.5 | **LRC page 10; MOSAIC page 13**  (a) A timeframe must be specified within which the integrated electronic repository must be established to ensure timeous implementation.  (b) The provision must comprehensively deal with the functions, powers and responsibilities of the person appointed in terms of subsection (2), in order to make him or her accountable | (a) A timeframe for establishing of the integrated electronic repository may be considered. However, various other role-players are involved in this process, among others, external service providers and SITA.  (b) The functions and responsibilities of the person appointed in terms of subsection (2), may be imposed via a service contract. It is however submitted that regulations should be issued to regulate some aspects of the electronic repository. |

**13. Clause 11: Section 7 (Court’s powers in respect of protection order)**

|  | **Comments** | **Responses** |
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| 13.1 | **Centre for Child Law:**  Section 7(5): It is submitted that the protection given regarding the addresses of the child be expanded to when a matter is referred to the Children’s Court to ensure continued protection of such sensitive information. Therefore, the paragraph should be revised to read:  "Where the complainant or related person is a child the non-disclosure of the complainant’s or related person’s physical, home and work address will be of effect until a children’s court inquiry into the matter has been held, where then the privacy provisions under the Children’s Act 2005 will apply.". | This is not necessary. |
| 13.2 | **CITY OF TSHWANE; LISA VETTEN, PAGES 16 AND 17; MOSAIC PAGES 13 TO 14**  *Section 7(1)(c)*: The commentators refer to subsection (1)*(c),* that provides that a protection order may prohibit the respondent from entering a residence shared by the complainant and the respondent: Provided that the court may impose this prohibition only if it appears to be in the best interests of the complainant. According to the commentators, this provision may be in conflict with the Prevention of Illegal Eviction From, and Unlawful Occupation of Land Act 19 of 1998. To address this conflict and also other possible conflicts between the DVA and other laws, it is proposed that a provision must be inserted in the DVA to the effect that it applies to the exclusion of other laws. | Section 7(1)(c) is not in conflict with the Illegal Eviction From, and Unlawful Occupation of Land Act, which deals with the eviction of unlawful occupiers as defined in section 1 of that Act. It is not necessary to provide that the DVA applies to the exclusion of any other law by virtue of the general principles of interpretation of laws, which demarcates the application of each law. |
| 13.3 | **Pro Bono.org**  (a) The proposed amendments to section 7 are welcomed, however, it is proposed that section 7(1)*(e)* be revised as follows –  *"entering the complainant's residence****, or any other residence or place that the complainant may be residing from time to time, including any shelter or place of safety at which the complainant may be temporarily staying at;"***  According to the commenter, the revised wording is more inclusive, taking into account the circumstances of many complainants who often find themselves without a steady place of residence upon leaving their shared residence to avoid further abuse. This more expansive prohibition affords complainants better protections, whilst preventing the need to return to the courts to vary protection orders to include a particular new temporary address that a complainant may be residing or staying at.  (b) In light of the inclusion of the definition of "spiritual abuse" in the Bill, it is proposed that section 7(1)*(f)* be revised to read as follows:  *"entering the complainant's workplace****, [or]*** *place of studies* ***or place of worship or religious practice****;"*.  (c) It is also propose that section 7(1)*(h)* be revised by inserting the words "or the publication of any digital media file" after the word "communication" so that it reads as follows:  *"committing any other act as specified in the protection order, including the distribution of any specified communication* ***or the publication of any digital media file****, whether electronically or otherwise, on social media or elsewhere."* | (a) and (b): The address of the residence would be affixed to the order to ensure that the respondent knows what the prohibition entails. An open ended extension to a residence which is unknown or may change may place the respondent at risk of breaching the order unintentionally. The addresses of shelters are definitely not included in protection orders. Subsection (1)(h), gives the court an open mandate to prohibit any other act as specified in the protection order, which may include to enter any place where the complainant is present.  (c) The inclusion of "publication of any digital media file" since it is covered by "the distribution of any specified communication". |
| 13.4 | **WLC**  WLC supports these amendments. | The support for this proposal is noted. |
| 13.5 | **LRC page 11**  (a) Section 7(1)*(h)*: The prohibition of the distribution of communications is welcomed and will provide for the curbing of further harmful conduct.  (b) Section 7(2)*(b):* The recommendation by the court is an important assurance to victims of domestic violence. | Noted |

**14. Clause 12: Section 8 (Warrant of arrest upon issuing of protection order)**

|  | **Comments** | **Responses** |
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| 14.1 | **South African Police Service (National Commissioner)**  It is unclear whether a police official is obliged in terms of clause 4 to arrest a perpetrator where there is physical violence (mandatory arrest) or whether the factors contained in section 8 should be considered. Clarity is required to avoid confusion. | While the factors to be considered may weigh in favour of arrest (physical violence, by implication, cannot be regarded as falling outside the ambit of section 8(5), which obliges a police official to arrest), uncertainty should be removed. These sections will be aligned to ensure that mandatory arrest is effected for physical violence in breach of a protection order. |
| 14.2 | **SAWID**  Some of the presiding officers had indicated Section 8(4)*(b)* gave discretion to police not to arrest even when there was a protection order issued by the court accompanied by an authorized warrant of arrest. This, according to the commentator, gives the SAPS a veto over the order of court. The current wording of this provision and various other provisions in the Act, where discretionary language are used should be limited to do away with discretion to act or not to act. | Discretionary powers are necessary for the exercise of coercive powers in accordance with the circumstances of each case. This is recognised by various other laws, among others, the Criminal Procedure Act, 1977 (see section 41). It is submitted that section 8(4)(b), should not be amended to take away the discretion of a police official. The discretionary powers afforded elsewhere in the Act and this Bill, is for the same reasons, necessary. |
| 14.3 | **WLC; MOSAIC page 14**  (a) Paragraph *(c)* of subsection (5) must be deleted, since the length of time since the breach occurred is irrelevant and presents opportunity for the use of individual discretion and ultimately failure to arrest.  (b) WLC does not support the addition of subsection (5)*(d)* as this information (the nature and extent of harm previously suffered) should be irrelevant to the consideration of whether the complainant is suffering or may suffer harm. WLC recommends that this subsection be deleted. | (a) This proposal will be considered in the revision of the Bill. Paragraph (c) seems to be intended to address the time period that has elapsed from the contravention of the protection order to the time that a police official is requested to execute a warrant.  (b) This proposal of the WLC together with the proposal in paragraph (a), will be considered during the revision of the Bill. |
| 14.4 | **Lisa Vetten, pages 17 and 18; MOSAIC page 15**  (a) Section 8(4)*(b)* and *(c)*: Subsection (4)*(b)* provides that a police officer may arrest a person who breach a protection order if there is "reasonable grounds to suspect" that a compliant may suffer harm. Subsection 4*(c)* provides that if there are "insufficient grounds" (as contemplated in paragraph (4)*(b)*)to arrest a person a written notice must be issued. The commentator is of the opinion that words "reasonable grounds to suspect" and "insufficient grounds" are imprecise and further guidance to police officials is necessary.  (b) Amendments are proposed to subsection (5) to clarify the criteria to be considered to determine whether a complainant suffers harm. | (a) It is submitted that subsection (5) provide guidance to determine whether the complainant suffers harm. The word "reasonable grounds to suspect" has been interpreted extensively by the courts and is to the effect that objectively viewed there is a suspicion that the complainant is suffering or may suffer harm with reference to the criteria provided for in subsection (5). If there is "reasonable grounds to suspect" as contemplated in subsection (4)*(b)*, read with subsection (5), then "insufficient grounds" as contemplated in subsection 4*(c),* cannot find application, and the person must be arrested.  (b) It is submitted that the proposed amendment to subsection (5), is cosmetic and does not add further clarity to the subsection ("risk" already includes "any risk"; "harm" already include "any harm"; and the insertion of "where relevant" *ipso facto* follows from the wording of subsection (5)). |

**15. Clause 13: Section 9 (Seizure of weapons)**

|  | **Comments** | **Responses** |
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| 15.1 | **Children’s Institute:**  Although the seizure of weapons is supported, the returning of weapons to the respondent goes against the protection of women and children from gun violence in domestic violence cases. It is recommended that any weapon seized in connection with a domestic violence case must be confiscated and the firearm licence of the owner of the weapon should be suspended for a period of 5 years or more. | The court will determine if the weapon must be seized and if so direct that the record be referred to the police to deal with the matter in terms of the Firearms Control Act. It is submitted that an expedited provisional seizure of weapons, especially fire-arms, should be considered where there is clear evidence substantiating domestic violence. In practice, a perpetrator stay in possession of those fire-arms until a court order the seizure thereof in terms of section 9. |
| 15.2 | **South African Police Service (National Commissioner)**  The Service supports this proposal. It however further proposes that the reference to National Commissioner should also be substituted with “the relevant station commander” to ensure a speedier response.  It is further recommended that reference in section 9(4) to “National Commissioner” should also be changed to “relevant station commander as indicated by the complainant or in the application for a protection order”. The power to declare a person unfit to possess a firearm has been delegated down to station level. The delay of referring the matter to the National Commissioner may have safety and other implications for the complainant. | The comment is noted and necessary amendments will be effected. |
| 15.3 | **Southern African Catholic Bishops’ Conference page 6**  There are various incidents in which members of the SAPS and SANDF 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. The seizure of a weapon under the control of a respondent "regardless of the requirements of the respondent’s employment" makes it easier to remove those weapons. The provision is supported. | Noted |
| 15.4 | **Wise 4 Afrika**  Disarming of Police with protection orders against them! It is important to suspend firearm licenses of all with standing protection orders and block any new applications thereof. Example from an immediate past experience – a female boxer in the Eastern Cape was murdered by a cop boyfriend whom she had a protection order against but he still had access to his service arm. The possession of fire arms by members of the SAPS against whom protection orders were issued must be addressed. | Dispossession of a firearm can only be made after an order of court to this effect. The Service may however elect to revise its National Instructions on Domestic Violence to specifically address the manner in which police who have protection orders issued against them should be dealt with. |
| 15.5 | **WLC**  WLC supports these amendments | The support of the proposal is noted. |
| 15.6 | **Lisa Vetten pages 18 and 19**  Section 9(1): The provision deals with the circumstances under which a court may order the seizure of weapons. The commentator recommends that this circumstances be expanded to include the following:  "(iv) any previous convictions for violence-related offences". | This proposal will be considered in the revision of the Bill. |
| 15.7 | **LRC page 11**  Section 9(4): It is proposed that a specific timeframe be determined within which the clerk of the court must inform the National Commissioner of the protection order. |  |

**16. Clause 14: Section 10 (Variation or setting aside of protection order)**

|  | **Comments** | **Responses** |
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| 16.1 | **SAWID**  SAWID recognizes that there has to be a balance in allowing complainants to withdraw cases where their circumstances have changed and where the agency of a complainant is not taken away. However, it may be important for the court to probe and further satisfy itself that the withdrawal is not due to undue pressure. There has been a lot of cases where family members put pressure on complainants to withdraw cases against perpetrators and it would therefore be prudent for the court to make sure there is no undue influence and further satisfy itself that the circumstances of the complainant have changed for the better. | The *onus* is on the parties to show that the circumstances have changed materially since the granting of the order and that good cause has been shown for the variation or setting aside of the order. |
| 16.2 | **WLC**  WLC supports these amendments. | Noted. |
| 16.3 | **Lisa Vetten, pages 19 to 20**  (a) A court must only allow the withdrawal of an interim or final protection order, when it is convinced that the applicant is not at further risk of violence or abuse and that the applicant’s withdrawal of the order is not under duress. An affidavit to that effect must be filed by the applicant.  (b) The commentator recommends that criminal proceeding, ancillary to protection orders should continue, unless a complaint request that the case be withdrawn, the reasons for be provided therefore which must be documented, the withdrawal is not done under duress; and there is clear evidence that children are not likely to be endangered should the case be withdrawn. | (a) It is submitted that the proposal is by implication already catered for in the amended subsection (2), which requires that the court must be satisfied "that circumstances have changed materially since the granting of the original protection order and that good cause has been shown for the variation or setting aside of the protection order". The application must be made under oath and it is not necessary to specifically require an additional affidavit.  (b) This recommendation will be considered during the revision of the Bill.. |

**17. Clause 15: Section 11 (Attendance of proceedings and Prohibition on publication of certain information)**

|  | **Comments** | **Responses** |
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| 17.1 | **Lisa Vetten, page 20**  Section 11(2), deals with the prohibition of publication of certain information and it is requested that publication be clarified in relation to publication by electronic media. | It is submitted that this is not necessary since publish includes the distribution of information in electronic form. |
| 17.2 | **Wise 4 Afrika**  Section 11(2)(a), prohibits the publication in any manner any information of information that might, directly or indirectly, reveal the identity of any party to the proceedings. The commentator opposes the provision in that it seeks to silence victims/survivors of GBV who have a right to tell their story and share their experience. Finding their voice and being able to freely tell their story is a big part of victims/survivors' journey to recovery and in fact, what has even brought us to this moment of the revision of these bills - womxn refusing to be silenced!  The impunity that is enjoyed by perpetrators who use “defamation of character” to silence victims/survivors while dodging the criminal justice system where such character could be reviewed, is another form of system victimization of survivors. | The primary purpose of this section is to protect the parties from having personal details shared in the media for all and sundry to read.  A provision may be considered to allow, any party to the proceedings to share information that falls within this prohibition, which will be similar to section 154 of the Criminal Procedure Act, 1977. |
| 17.3 | **WLC**  WLC supports these amendments. | Noted. |

**18. Clause 16: Section 12 (Jurisdiction)**

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|  | **Lisa Vetten page 21**  The court's jurisdiction should be extended to a “place of study” for the complainant. | This may be considered in light of the fact that jurisdiction may be vested if a complainant carries on business or is employed within the area of a court. |

**19. Clause 17: Section 13 (Service of documents)**

|  | **Comments** | **Responses** |
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| 19.1 | **Lisa Vetten, pages 21 to 22**  The commentator recommends that additional amendment may need to be effected to service of documents. Subsection 1(a), provides that service of documents must be affected at his or her residence. Where the applicant and respondent share a residence, it is possible that documents which must be served on the respondent, may also be served on the applicant, who must then bring those documents to the attention of the respondent, which may give rise to further violence. An amendment to this section is proposed to the effect that in the case of a shared residence, documents may not be served on the other party to the proceedings. | The proposed amendment will be considered during the revision of the Bill. |
| 19.2 | **WLC**  WLC supports these amendments. | Noted |

**20. Clause 18: Section 15 (Orders as to costs of service and directions)**

|  | **Comments** | **Responses** |
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| 20.1 | **ANCWL**  A costs order against the complainant is criticised. According to the commentator, domestic violence cases should not, and cannot be considered similarly to civil cases. Complainants may be deterred by this from pursuing justice. | The court would not ordinarily impose a costs order against any party, but may do so if a party acted frivolously, vexatiously or unreasonably. |
| 20.2 | **WLC**  WLC supports these amendments. | Noted |

**21. Clause 20: Section 17 (Offences)**

|  | **Comments** | **Responses** |
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| 21.1. | **Children’s Institute:**  It is submitted that the imposition of harsher sentences has not been proven to act as a deterrent to domestic violence or other forms of violence against women and children. Instead, evidence has shown that the death penalty and life sentences do not prevent crime or minimise violence. A functional criminal justice system to successfully prosecute offences and law enforcement services which better serve communities are required. | The remarks of the commentator are acknowledged as correct. From a criminology perspective, punishment certainty is far more found to deter crime than punishment severity. Increased penalties in the context of the Bill and domestic violence do serve as deterrence specifically in relation to reoffenders. |
| 21.2 | **Zuzekile Ndzunge (concerned citizen)**  Domestic violence offences should as a minimum be punishable by imprisonment ranging from more than five years up to 10 years.  . | Noted |
| 21.3 | **South African Police Service (National Commissioner)**  Increased penalties for repeat offenders is supported. | Noted |
| 21.4 | **SAWID**  SAWID proposes that Parliament explores the possibility of adding restorative justice elements to the proposed bill so that those victims interested in it know the steps to be followed. It is important to have a criminal justice system that is functional and  victim-centric. | The Bill do ensure for additional measures to deal with domestic violence, among others –  \* enquiries in respect of the respondent in terms of section 35 of the Prevention and Treatment for Substance Abuse Act, 2008 and commit the respondent to a treatment centre for substance abuse;  \* investigations in terms of Mediation in Certain Divorce Matters Act, 1987, with regard to the welfare of a child; and  \* investigations in terms of the Children’s Act, 2005, if it appears to that court that a child involved in or affected by proceedings in question is in need of care and protection. |
| 21.5 | **Wise 4 Afrika**  Breach of protection order must be a criminal offence and civil in nature, to allow victims/survivors to seek recourse. | The breach of a protection order is a criminal offence only. |
| 21.6 | **WLC**  WLC supports these amendments. | Noted |
| 21.7 | **Sithembile Mqadi, HP Attorneys**  (a) All their assets(offenders) should be frozen and donated to the organisations of victims that have suffered sexual offences and domestic violence to help them to learn employment skills  (b) Once a case has been opened, victims shouldn't be able to close a case or the full costs of the case by the state should be charged to them | Noted |

**22. Clause 21: Section 18 (Application of Act by prosecuting authority and members of South African Police Service)**

|  | **Comments** | **Responses** |
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| 22.1 | **Lisa Vetten, pages 22 to 23 - (the commentator refers to section 19, which is the section that deals with regulations)**  (a) The commentator recommends that reporting as contemplated in subsection (5)*(c)* and (d) by the Civilian Secretariat and National Commissioner, regarding misconduct in the form of non-compliance with the national instructions must take place on or before statutory specified dates that will substitute the reference to "every six months".  (b) According to the commentator, the Civilian Secretariat is a national body that relies on the provincial structures of community safety to undertake monitoring in terms of the DVA. These provincial structures are accountable to the MEC for Safety and not the Civilian Secretariat. A proposal is made that in order to enhance national oversight, provincial oversight should also be considered. The proposal is to the effect that provincial offices of community safety must present the findings of their station audits to the relevant provincial legislature, which must ensure that the provincial commissioners of police and other officials are called to account for their province’s performance. | (a) The substitution of the 6 months' timeframe for reporting with specific dates is not necessary.  (b) The proposed amendment will be discussed with the Civilian Secretariat to come up with a solution aimed to facilitate provincial oversight. |
| 22.2 | **SAIFAC pages 9 to 10**  The accountability mechanisms to ensure that members of the SAPS who fail to adhere to their obligations in terms of the Act, will face disciplinary action. Research indicates that the National Commissioner rarely tables reports before Parliament as required. Furthermore, disciplinary action is seldom taken against errant police officers. It is a concern that the Bill does not adequately address this challenge since the existing accountability mechanisms have proved to be woefully inadequate. An accountability and oversight mechanism that may be considered is oversight role for the Commission on Gender Equality. | The proposal may be considered during the revision of the Bill as a possible additional mechanism for oversight. |

**23. Clause 22: Insertion of sections 18A (directives for clerks of court) and 18B (directives by various Departments regarding matters which are reasonably necessary or expedient to be provided for and which are to be followed by functionaries and other relevant persons when dealing with domestic violence cases, in order to achieve the objects of the Act)**

|  | **Comments** | **Responses** |
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| 23.1 | **South African Police Service (National Commissioner)**  The Service welcomes these proposals. There is no doubt that the effective combating of domestic violence requires a multi-departmental approach. The impact of measures to address domestic violence largely depends on the co-ordinated services rendered by different departments and stakeholders in support of victims. | Noted. |
| 23.2 | **SAWID**  Training and skilling on the DVA should be prioritized. Further that protocols, guideline, norms and standards should be put in place prior to the Act coming into effect.  Functional literacy of the clerks of court is important in order to ensure that court systems do not undermine access to justice of complainants and/ or survivors of domestic violence. Interpretation and knowledge of the primary purpose of DVA is important for outcomes, as one of our magistrate participants indicated ‘interpretation becomes the crucial point in the journey of the complainants, in terms of who receives them, how they are received, how the complaint is taken down, what relevant questions to ask’. All these facts are important for the approach to be followed on the case.  Clerks and SAPS play a crucial role as far as this Act is concerned and therefore proper periodic and/ or ongoing gender transformative training is required to ensure that role players keep up with the victim-centric approach as contemplated in the Act.  Sign language at courts, and access to courts by persons with disabilities remains an issue.  The disciplinary steps to be taken against clerks of the court for non-compliance with the proposed section 18A directives are supported.  Parliament must engage with all the Departments who are obliged to issue directives under section 18B to ensure their readiness. Parliament must ensure oversight to ensure compliance. It is pointed out that excellent legislation is promulgated that is not optimally implemented by the responsible functionaries.  It is recommended that the Department of Cooperative Governance and Traditional Affairs (COGTA) must be added to section 18B, as a responsible functionary, in order to ensure that Local Government also respond to gender based violence and femicide. | Noted. The following responses may be provided to the comments:  (i) It is submitted that oversight by Parliament necessary to ensure compliance with the Act, as amended by the Bill, and that a periodical reporting obligation may be imposed on these Departments in terms of the Bill.  (ii) The Department of Justice is not included in section 18B. The Department is responsible for the administration of the Act and such directives may facilitate the implementation of the Act.  (iii) Many other Departments have since been identified as role-players to the effective implementation of the .Act. These Departments should also be included in section 18A. |
| 23.3 | **Wise 4 Afrika**  A timeframe should be set to implement the provisions of the Act | This may be considered |
| 23.4 | **WLC**  Section 18A is supported. It is recommended that a timeframe should be promulgated for the issuing of the directives. A period of 6 months from the date of commencement of the Bill is proposed. | This may be considered |
| 23.5 | **Lisa Vetten , pages 23 to 24**  A system should be put in place to monitor compliance with the directives by the clerks of court. It is proposed that a timeframe 12 moths for the publication of the directives be included in the provision. | The period of 12 months can be reduced to six months. Monitoring is usually done at the level of magistrate's courts, and may, if the Department is added to section 18A be regulated on an administrative basis. |
| 23.6 | **Lisa Vetten pages 24 to 28**  Section 18B: Various other proposal are made in respect of additional directives and action that should be considered to strengthen the implementation of the DVA, among others, clear guideline in relation to arrests, guidelines around risk assessment by the SAPS in relation to complainants, revision of National Instructions and Standing Orders by the SAPS, statistical reporting by the various functionaries and Departments involved.  .  **MOSAIC pages 14 to 15**  A statutory time frame should be imposed (6 moths from date of promulgation), within which the Directives must be finalised. | These proposals may be considered during the revision of the Bill.  This may be considered during the revision of the Bill. |