**RESPONSES ON DOMESTIC VIOLENCE AMENDMENT BILL**

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|  | **Comments** | **Response** |
| 1. | **The Warrior Project – ‘economic abuse’ pg 25**Insert the words “education expenses” between the words “including” and “household expenses” in clause 1*(j)(a)*. | Although ‘education expenses’ are covered under the expression ‘economic or financial resources to which a complainant or related person is entitled under law” this item could be listed as it impacts directly on children in the home. |
| 2. | **The Warrior Project – ‘emotional, verbal or psychological abuse’ – pg 29**(a) Substitute the words ‘emotional pain’ with the word ‘harm’ in clause 1*(m)(b)*, for the cause to read: “**[repeated]** threats **[to]**that cause **[emotional pain]**harm;”.(b) Insert the word “manipulating” between the words “degrading” and “or humiliating” for the provision to read: “**'emotional, verbal [and] or psychological abuse'** means a **[pattern of]** degrading, manipulating or humiliating conduct towards a complainant or a related person, including—”.(c) Insert between subsections (b) and (c) “(c) gaslighting”. ‘gaslighting’ must in turn be defined to mean “manipulating a complainant by psychological means to cause a complainant to doubt his or own sanity or memory.”. | (a) As ‘harm’ is defined the substitution is supported..(b) This element is not clearly included in this definition. The department supports the inclusion as proposed.(c) As the inclusion of the word ‘manipulating’ is supported above it would not be necessary to include ‘gaslighting’ as it would be included by reference. |
| 3. | **Legal Resources Centre pg 37**The definition of ‘sexual abuse’ should include:(a) ‘Sex-Based Harassment’. ‘Sex-based harassment’ should in turn be defined to read: “unwanted verbal, written, or physical conduct based on a person's sexual orientation, gender, gender expression, or physical appearance”. (b) Unwelcome explicit or implicit behaviour, 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. | (a) The definitions include ‘sexual abuse’ and ‘sexual harassment’. Consideration could be given to inclusion in the latter definition to specifically refer to sexual orientation, gender, gender expression, or physical appearance..(b) This suggestion is not supported as it is covered by the definition of “sexual harassment” as defined. |
| 4. | **South African Police Service (National Commissioner) pg38**The definition of ‘sexual harassment’ includes “*(b)*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 reasonably 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. | Points raised by SAPS are for clarity or to assist with the flow of the document. They have expressed their overall support of the Bill and a bilateral has been arranged. . The inclusion of the term “or a related person” in *(b)* is misplaced in this definition and should be removed. |
| 5. | **Lisa Vetten and a number of respondents do not support mandatory reporting. However others** like the YWFLM, WLC and Wise 4 Afrika support it.**South African Police Service (National Commissioner) pg 44**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.**pg 45**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 SAPS (while in matters referred to in sub-section (2), must be reported to both a social worker and the Service). No differentiation is made between incidents where the domestic violence constitute an offence and incidents where no offence is being committed. | The department are swayed in favour of removing the mandatory reporting provision based on the negating of a woman’s autonomy and the risk to her safety and her support network.It could further place an adult in direct danger where she is not notified that the matter has been reported and she has not had the opportunity to put a safety plan in place.It could further place an adult in direct danger where she is not notified that the matter has been reported and she has not had the opportunity to put a safety plan in place.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.Support the proposal to remove the word “and” and replace it with “or” in clause 2A(2)*(a)*(ii) so as to not require a reporting be made to both the social worker and the police. |
| 6. | **Women’s Legal Centre pg 47**In clause 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 dutiesor 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).”. | The Department has no objection. In light of the Department suggestion to delete mandatory reporting in relation to an adult, clause 2A(1) should be revised to read:“A functionary, who in the course of the performance of **[their]**his or her dutiesor the exercise of **[their]**his or her functions [**in relation to any person]**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).”. Furthermore, references to clause 2A(1)*(a)* should be changed to refer to clause 2A(1) and references to clause 2A(1)*(b)* should also be deleted. |
| 7. | **Lisa Vetten pg 48**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 relation to children, older persons and people with disabilities. | The department supports the alignment of the mandatory reporting in respect of children, the elderly and persons with disabilities with the Children’s Act, OPA and a redrafting of the definition of disability.The propose section 2A will be amended to deal with child victims of domestic violence in accordance with the Children's Act and with the retention the directiveto provide additional services to child victims.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. The definition of disability and the proposed section 2A will be revised to address the concern of over broadness. |
| 8. | **MOSAIC pg 53**(a)It is recommended that the reference to a "person with a disability" in section 2A(1)*(a)* be substituted for the following expression: "who presents with a physical, psycho-social or intellectual disability that impacts on their capacity to make decisions".(b)It is proposed the omission of physical addresses in the lists to be provided to the complainant under clause 2A(3)*(b)*. The reason for omission of the addresses of shelters, is to keep their location confidential to ensure the safety of the shelter users.(c) The clause should also insert a paragraph to read: “(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.”. | (a) The proposed amendment is not supported as the restrictive to an extent that it excludes other types of disability.(b) Proposal is supported. The essence of the proposal can be achieved by amending clause 2A(3)*(b)*(ii) to read:“(i) provide the complainant with a prescribed list containing the names and contact particulars of accessible shelters and public health establishments: Provided that the list must not contain the addresses of the shelters and public health establishments;”.(c) This could form part of the directives. A social worker should be trained to assist with this.It is not the responsibility of the functionaries to prepare a safety plan, as many of these functionaries may not have the expertise to do so. However, paragraph *(c)* of the subsection does provide for referral 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). |
| 8. | **Southern African Catholic Bishops’ Conference pg 53**Clause 2A 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 section 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. | The clause is intended to protect those who are vulnerable. Even if they are able to make decisions for themselves, the provision will be available for those who are not able to make informed decisions. |
| 9. | **South African Police Service pg 67**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.  | 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. Failure to arrest, due to discretionary power to arrest where there is physical abuse could leave the victim in danger |
| 10. | **South African Police Service pg 76**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)*. | This could form part of the directives. A social worker should be trained to assist with this.The amended clause 6(6)*(a)* provides that: “The clerk of the court must **[forthwith]**immediately, in the prescribed manner, forward certified copies of any protection order and of the warrant of arrest contemplated in section 8(1)*(a)* to the police station of the complainant's choice. Similar provision should be inserted as clause 5(3)*(e)*. |
| 11. | **Wise 4 Afrika pg 77**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. | Currently the responsibility to issue a protection order is placed on the courts. To authorise the police to issue an on the spot interim protection orders would require a policy decision and extensive consultation, that could not be accommodated in the Bill at this stage. |
| 12. | **Lisa Vetten, pg 82**It is proposed that subsection 5C(2) be amended to provide that where it has been established that a previous protection order is in place, and where the original application has not been finalized, an attempt should be made to hear the parties together. A notice to show cause should be issued and the return dates amended accordingly. | The department finds merit in hearing applications together. The proposed provision does not belong under clause 5C which deals with existing or reciprocal orders. Therefore, the proposal can be inserted as clause 4(8) to read: “The court must, where it is established that there is an application pending between the same parties, order that both applications be dealt with together and give directions as to the allocation of a date of hearing and the notification of parties.”.  |
| 13. |  **SAWID**pg90Highlights a possible discretion created by section 8(4)(b) not to arrest for breach of a protection order. | Clause 8(5), in considering to effect an arrest, requires the member of the South African Police Service to take into account– *(a)* *(a)*the risk to the safety, health or wellbeing of the complainant or related person;*(b)* *(b)*the seriousness of the conduct comprising an alleged breach of the protection order; **[and]***(c)* *(c)*the length of time since the alleged breach occurred; and*(d)*the nature and extent of the harm previously suffered in the domestic relationship by the complainant or related person.”.Factors listed in section 8(5)*(b)* and *(c)* relate to instances where the protection order has been breached. Therefore, only (a) and (d) should be listed in clause 3(1)*(a)* as factors to be considered by the police when effecting an arrest. However this should be read together with clause 4 which requires mandatory arrest for physical violence. The department is of the view that this should apply for breach of protection orders too. The sections should be aligned for clarity. |
|  | **WLC; MOSAIC pg 90**(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) The reason for the inclusion of the length of time is to ascertain the safety of the complainant in the context of the other factors and the need for urgent intervention on the part of the police. If a year has passed it could be argued that the situation may reflect that the complainant is not experiencing the level of harm she may be if the incident had just or recently occurred. (b) Although it is a factor it should not be seen as a reason for not arresting where if there has never been previous harm suffered by the complainant. These factors can be dealt with in the directives or SOP. |
|  | **South African Police Service pg 92**The reference to National Commissioner should be substituted with “the relevant station commander” to ensure a speedier response. | The department has taken note that the power to declare a person unfit to possess a firearm has been delegated down to station level. |
|  | **LRC page 94**It is proposed that a specific timeframe be determined in clause 9(4) within which the clerk of the court must inform the National Commissioner of the protection order.  | This comment is supported. It is suggested that a provision requiring the clerk of the court to do so as soon as reasonably possible. |
|  | **Lisa Vetten, pg 94**(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. | Clause 10 deals with the variation and rescission of a protection order. The amended clause 10(2) requires good cause to be shown for the variation or setting aside of the protection order, there will be no good cause if there is still risk of violence or abuse. Also the proviso to that clause requires the application to be made freely and voluntarily. |
|  | **Lisa Vetten, pg 95**It is recommended 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. | Section 18 has been amended to provide for mandatory prosecution. Criminal proceedings are automatically withdrawn due to the variation or rescission of a protection order, unless the criminal case is also withdrawn. |
|  | **Lisa Vetten pg 96**The court's jurisdiction should be extended to a “place of study” for the complainant. | The extension of jurisdiction to include “place of study” is supported as the reach of a protection order has been extended to include a place of study. Any barriers to making an application for a protection order should be removed..  |
|  | **Lisa Vetten pg 96**An amendment to section 13(1) 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 risk to complainants sharing a residence is recognised. It may be advisable to request a complainant to be informed of the risk and be requested to indicate an alternate place of service or to clearly indicate that the complainant may not be served with the protection order. |