**REPUBLIC OF SOUTH AFRICA**

**EXPLANATORY DOCUMENT 21 May 2021**

**DOMESTIC VIOLENCE ACT AMENDMENT BILL**

*\_\_\_\_\_\_\_\_\_\_\_\_*

**WORKING DOCUMENT**

**9 March 2021**

**PC**

*\_\_\_\_\_\_\_\_\_\_\_\_*

**(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)**

**[B20—2020]**

**GENERAL EXPLANATORY NOTE:**

~~Abcdef~~ Words with strikethrough indicate omissions from the Bill

\_\_\_\_\_\_\_\_\_\_\_ Words double underlined indicate insertions in the Bill

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**BILL**

**To amend the Domestic Violence Act, 1998 so as to—**

**\* amend and insert certain definitions;**

**\* further provide for the manner in which acts of domestic violence and matters related thereto, must be dealt with by certain functionaries, persons and Government departments;**

**\* further regulate obtaining of protection orders in response to acts of domestic violence;**

**\* delete and amend provisions of certain laws; and**

**\* provide for matters connected therewith.**

**PARLIAMENT** of the Republic of South Africa enacts as follows:—

**Insertion of Arrangement of Sections in Act 116 of 1998**

 **1.** The following Arrangement of Sections is hereby inserted in the Domestic Violence Act, 1998 (Act No. 116 of 1998) (hereafter referred to as the principal Act):

**"ARRANGEMENT OF SECTIONS**

*Sections*

1. Definitions

2. Duty to assist and inform complainant of rights

2A. Obligations of functionaries relating to domestic violence

2B. Obligation to report of domestic violence and to provide information

3. Arrest by peace officer without warrant

3A. Entering of private dwelling for purposes of obtaining evidence

4. Application for protection order

4A. Domestic violence safety monitoring notice

5. Consideration of application and issuing of interim protection order

5A. Attendance of witnesses

5B. Electronic communications service provider to furnish particulars to court

5C. Existing orders or reciprocal orders

6. Issuing of final protection order

6A. Establishment of ~~an~~ integrated electronic repository for domestic violence protection orders and related matters

7. Court's powers in respect of protection order

8. Warrant of arrest upon issuing of protection order

9. Seizure of weapons

10. Variation or setting aside of protection order

11. Attendance of proceedings and prohibition of publication of certain information

12. Jurisdiction

13. Service of documents

14. Legal representation

15. Orders as to costs of service and directions

16. Appeal and review

17. Offences

18. Application of Act by prosecuting authority and members of South African Police Service

18A. Directives for clerks of the court

18B. Directives for Departments of Health, Social Development, Basic Education, Higher Education and Training and Communications and Digital Technologies

19. Regulations

20. Amendment of laws

21. Repeal of laws and savings

22. Short title and commencement".

**Amendment of section 1 of Act 116 of 1998, as amended by section 10 of Act 31 of 2008**

 **2.** Section 1 of the principal Act is hereby amended—

*(a)* by the deletion of the definition of **“arm”**;

*(b)* by the insertion before the definition of **“clerk of the court”** of the following definitions:

"**'capture'** in relation to the integrated electronic repository, means to store documents in the—

*(a)* manner; and

*(b)* format,

in the integrated electronic repository, as may be prescribed in terms of section 6A;

 **‘child’** means a person under the age of 18 years;”;

*(c)* by the insertion after the definition of **“clerk of the court”** of the following definition:

**Option 1:**

“ **‘coercive behaviour’** means any conduct or pressure intended to cause or which has the effect of causing a complainant to act, not to act, or be subjected to certain acts against his or her will;”;

**Option 2:**

**"'coercive behaviour'** means any abusive behaviour towards a complainant that is intended to exert undue pressure on a complainant to act, not to act, or be subjected to certain acts, against his or her will;"

**Option 3:**

 **"'coercive behaviour'** means to compel or force a complainant to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing;";

**Option 4:[[1]](#footnote-1)**

**~~"'coercive behaviour'~~** ~~means—~~

*~~(a)~~* ~~violence or threatened violence towards a complainant or a related person;~~

*~~(b)~~* ~~damage to property or threats of damage to property belonging to the complainant or a related person; or~~

*~~(c)~~* ~~any pattern of abusive behaviour towards a complainant,~~

~~which is intended to exert undue pressure on a complainant to act, not to act, or be subjected to certain acts, against his or her will;";~~

*(d)* by the insertion after the definition of **“complainant”** of the following definitions:

**Option 1:**

“ **‘controlling behaviour’** means causing the complainant to be dependent on or subordinate to the respondent by—

*(a)* isolating him or her from sources of support;

*(b)* exploiting his or her resources for personal gain;

*(c)* depriving him or her of the means needed for independence, resistance or escape; or

*(d)* regulating his or her everyday behaviour;

**Option 2:**

"‘**controlling behaviour’** means behaviour towards a complainant that is aimed at making the complainant dependent on or subservient to the respondent, which includes—

*(a)* isolating him or her from sources of support;

*(b)* exploiting his or her resources or capacities for personal gain;

*(c)*  depriving him or her of the means needed for independence, resistance or escape; or

*(d)* regulating his or her everyday behaviour;

**New definitions:**

 **'communication'** referred to in the definition of **'harassment'** means anything that is used to impart information or ideas, and includes a letter, text, photo, video recording, audio recordings but excludes an electronic communication;

**'co-respondent'** means a person who —

*(a)* is not or has not been in a domestic relationship with a complainant;

*(b)* conspired with, or was procured by, the respondent to committed an act of domestic violence against the complainant; and

*(c)* committed or allegedly committed or aided or allegedly aided the respondent in the commission of an act of domestic violence against the complainant;

 **~~'Criminal Procedure Act, 1977'~~** ~~means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);~~

*(e)* by the substitution for the definition of **“damage to property”** of the following definition:

**Option 1:**

**“‘damage to property'** means the wilful damaging or destruction of corporeal or incorporeal property, including those belonging to a complainant or **[in which the complainant has a vested interest]** a related person which causes harm to the complainant;”;

**Option 2:**

 ‘‘**‘damage to property’** means—

*(a)* the wilful damaging or destruction of any property in close vicinity of a complainant or a related person with the aim to cause mental or psychological harm to a complainant;

*(b)* the wilful damaging or destruction of property or threats of wilful damaging or destruction of property, belonging to a complainant or a related person, or in which the complainant or related person has a vested interest, where such behaviour causes harm to the complainant; or

*(c)* the harming of, or threats to harm a household pet or other animal belonging to a complainant or related person, where such behaviour causes harm to the complainant;"

**Option 3:**

**'damage to property’** means the wilful damaging or destruction of property or threats of wilful damaging or destruction of property, including those belonging to a complainant or a related person, or in which the complainantor related personhas a vested interest, where such behaviour harms, or inspires the reasonable belief that harm may be caused to the complainant;

**Option 4:**

**'damage to property’** means—

*(a)* the wilful damaging or destruction of property; or

*(b)* threats to damage or ~~destruction of~~ destroy property,

belonging to, which is in the possession or under the control of the complainant, or in which the complainant has a vested interest;

*(f)* by the deletion of the definition of “**dangerous weapon**”;

*(g)* by the insertion before the definition of “**domestic relationship**” of the following definitions:

 "**'disclose'** means to—

*(a)* send the electronic **communications** to a person who is the intended recipient of the electronic communications or any other person;

*(b)* store the electronic communications on an electronic communications network, where the electronic communications can be viewed, copied or downloaded; or

*(c)* send or otherwise make available to a person, a link to the electronic communications that has been stored on an electronic communication network, where the electronic communications can be viewed, copied or downloaded;

 **'Director-General'** means the Director-General: Justice and Constitutional Development;

**Option 1:**

**‘disability’** means 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;”;

**~~Option 2:~~**

 **~~'disability'~~** ~~means a mental illness or severe or profound mental disability as contemplated in the Mental Health Care Act, 2002 (Act No. 17 of 2002), which makes a person incapable of making an informed decision or give lawful consent;";~~

**New option requested by PC:**

 '**disability**' means a moderate to severe limitation of a person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual, mental or psychological impairment;

*(h)* by the substitution for the definition of “domestic relationship” of the following definition:

“ **'domestic relationship'** means a relationship between a complainant and a respondent in any of the following ways:

*(a)*  they are or were married to each other, including marriage according to any law, custom or religion;

*(b)* they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;

*(c)* they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);

*(d)* they are family members related by consanguinity, affinity or adoption;

*(e)* they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or

**Option 1:**

*(f)* they share or **[recently]** shared the same residence;”;

**Option 2:**

*(f)* they are persons in a close relationship[[2]](#footnote-2) that share or **[recently]** shared the same residence;"; **{Committee preferred option}**

*(i)* by the substitution for the definition of “**domestic violence**” of the following definition:

**“'domestic violence'** means—

*(a)* physical abuse;

*(b)* sexual abuse;

*(c)* emotional, verbal **[and]** or psychological abuse;

*(d)* economic abuse;

*(e)* intimidation;

*(f)* harassment;

*(fA)* sexual harassment;

*(fB)* related person abuse;

*(g)* **[stalking]** spiritual abuse;

*(h)* damage to property;

(*h*A) elder abuse (see definition and footnote to definition);

(*h*B) coercive behaviour;

(*h*C) controlling behaviour;

(*h*D) intentionally exposing (see or hear domestic violence) look at unintended consequences) ~~or subjecting~~[[3]](#footnote-3) children to behaviour listed in (*a*) to (*h*C) **(see footnote 4, for another option)**[[4]](#footnote-4);

*(i)* entry into the complainant's—

(i) permanent or temporary residence without his or her consent, where the parties do not share the same residence; or

(ii) workplace or place of study, without his or her consent, where the parties do not share the same workplace or place of study; or

**Option 1 (paragraph *(j)*):**

*(j)* any other **[controlling or abusive]** behaviour **[towards a complainant]**, where such behaviour harms, or inspires the reasonable belief that harm may be caused to the complainant ~~or a related person~~**[**

**Option 2 (paragraph *(j)*):**

*(j)* any other **[controlling or abusive]** behaviour towards a complainant, which a reasonable person having regard to all the circumstances would regard as behaviour —

(i) of an intimidating, threatening, abusive, degrading, offensive or humiliating nature; or

(ii) that inspires the reasonable belief that harm may be caused to the complainant**[**

**where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant][[5]](#footnote-5)**;”;

**Option 3:**

*(j)* any other **[controlling or abusive]** behaviour of an intimidating, threatening, abusive, degrading, offensive or humiliating nature towards a complainant,

where such conduct harms, or **[may cause imminent harm to, the safety, health or wellbeing of ]**inspires the reasonable belief that harm may be caused tothe complainant;"; - Preferred option.

*(j)* by the substitution for the definition of “economic abuse” of the following definition:

**Option 1:**

**“'economic abuse'** includes—

*(a)* the **[unreasonable]** deprivation of economic or financial resources to which a complainant[[6]](#footnote-6) is entitled under law or which the complainant requires out of necessity, including education expenses, household necessities for the complainant, and mortgage bond repayments or payment of rent in respect of the shared residence or accommodation; or

*(b)* the **[unreasonable]** disposal of household effects or other property in which the complainant has an interest;”;

**Option 2:**

 **“'economic abuse'** includes—

*(a)* the **[unreasonable]** deprivation of economic or financial resources to which a complainant[[7]](#footnote-7) is entitled under law or which the complainant requires out of necessity, including education expenses, household necessities for the complainant, and mortgage bond repayments or payment of rent in respect of the shared residence or accommodation;

*(b)* the **[unreasonable]** disposal of household effects or other property in which the complainant has an interest without the complainant's permission;

*(c)* the use of financial resources of a complainant, without the complainant's permission; or

*(d)* the coercing of the complainant to—

 (i) relinquish control over assets or income; or

(ii) sign a legal document that would enable the complainant's finances to be managed by another person;”; Prefered option

*(k)* by the insertion after the definition of “economic abuse" of the following definitions:

**~~[“‘educator’~~**~~][[8]](#footnote-8)~~ – **Was initially of the opinion that it should be removed. However, in the definition of functionary reference is made to various other categories of persons. After carefull consideration of the matter and to address interpretation issues it is recommended that the definition of educator must be retained and that the functionaries in the definition of "functionary" must be defined (will be discussed in broader detail in relation to the definition of "functionary"):**

**Current definition:**

"'**educator'** means any person, including a person who is appointed to

exclusively perform extracurricular duties, who teaches, educates or

trains other persons or who provides professional educational services,

including professional therapy and education psychological services, at

all public and independent schools as defined in the South African Schools Act, 1996 (Act No. 84 of 1996), all public and private colleges

and all public and private further education and training institutions

established, declared or registered in terms of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), and all public and private higher education institutions defined in the Higher Education Act, 1997 (Act No. 101 of 1997);

**Option 1:**

**‘elder abuse’** means 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 personas defined in the Older Persons Act, 2006 (Act No. 13 of 2006), and includes social isolation or neglect;

**Option 2:**

‘**elder abuse**’ means "abuse" of an older person as contemplated in section 30(2) of the Older Persons Act, 2006 (Act No. 13 of 2006),

occurring within a domestic relationship;[[9]](#footnote-9)

**~~Option 3:~~**

~~Delete.~~

**Option 1:**

**‘electronic communications’** means electronic communications as

defined in section 1 of the Electronic Communications Act, 2005;[[10]](#footnote-10)

**Option 2:**

**‘electronic communications’** means electronic representations of information in any form and includes without limitation voice, sound, data, text, video, animation, visual images, moving images and pictures or a combination or part thereof, that is disclsosed by means of an electronic communications service;[[11]](#footnote-11) Preferred option

**‘Electronic Communications Act, 2005’** means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

**Option 1: Current definition:**

'**electronic communications identity number'** means a technical identification label which represents the origin or destination of electronic communications traffic, as a rule clearly identified by a logical or virtual identity number or address assigned to a customer of an electronic communications service provider (such as a telephone number, cellular phone number, electronic mail address with or without

a corresponding internet protocol address, web address with or without a corresponding internet protocol address or other subscriber number);[[12]](#footnote-12)

**Option 2: Proposed definition in cleaned-up Bill**

 **'electronic communications identity number'** means a technical identification label which represents the origin or destination of

electronic communications;[[13]](#footnote-13) Preferred option

‘**electronic communications network’** means an “electronic communications network” as defined in section 1 of the Electronic Communications Act, 2005, and includes a computer system;

**‘electronic communication service’** means any service which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services as defined in section 1 of the Electronic Communications Act, 2005;

 ‘**electronic communications service provider’** means an entity or a person who is licensed or exempted from being licensed in terms of Chapter 3 of the Electronic Communications Act, 2005, to provide an

electronic communications service;”;[[14]](#footnote-14)

 *(l)* by the substitution for the definition of “emergency monetary relief” of the following definition:

**“'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, including—

*(a)* loss of earnings;

*(b)* medical, optical, **[and]** dental and related expenses;

*(c)* relocation and accommodation expenses; **[or]**

*(d)* household necessities;

*(e)* education expenses; or

*(f)* psychosocial services and counselling;”;

**A further option to be considered, which is not indicated on the working document, is to expressly provide for the payment of maintenance in respect of children in the care of the complainant, pending finalisation of maintenance procedures in terms of the Maintenance Act, 1998 (Act No. 99 of 1998) – This is relevant to section 7(4)[[15]](#footnote-15) and 7(7)*(b)*[[16]](#footnote-16) (courts powers iro protection orders)***.* **It is submitted that it is better to specifically include "maintenance" as a category of emergency monetary relief ito section 7(4), which can be qualified by section 7(7)*(b)*. - maintenance to be included**

**Proposed amendment:**

**“'emergency monetary relief'** means—

*(a)* 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, including—

**[(a)]**(i) loss of earnings;

**[(b)]**(ii) medical, optical, **[and]** dental and related expenses;

***[(c)]***(iii)relocation and accommodation expenses; **[or]**

 **[*(d)*]**(iv)household necessities;

 **[*(e)]****(v)*education expenses; or

***[(f)]****(vi)*psychosocial services and counselling; and

*(b)* maintenance of any child in the care of the complainant, pending finalisation of maintenance procedures in terms of the Maintenance Act, 1998 (Act No. 99 of 1998);”; - Consider when dealing with sec 7(4) + (7) of DVA = must/may

*(m)* by the substitution for the definition of “emotional, verbal and psychological abuse” of the following definition:

**Option 1:**

**“'emotional, verbal [and] or psychological abuse'** means **[a pattern of]** degrading, manipulating, threatening or humiliating conduct towards a complainant or a related person, with the aim to cause mental or psychological harm to a complainant, including—

*(a)* **[repeated]** insults, ridicule or name calling;

*(b)* **[repeated]** threats to cause emotional pain; **[or]**

*(c)* the **[repeated]** exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's privacy, liberty, integrity or security;

*(d)* inducing fear;

*(e)* the wilful damaging or destruction of any property in close vicinity of a complainant or a related person; or

*(f)* to harm or threaten to harm a household pet or other animal;”;

**Option 2:**

**“'emotional, verbal [and] or psychological abuse'** means **[a pattern of]** degrading, manipulating, threatening, offensive, intimidating - (consider unintended consequences) or humiliating conduct towards a complainant that causes mental or psychological harm to a complainant[[17]](#footnote-17), including—

*(a)* **[repeated]** insults, ridicule or name calling;

*(b)* **[repeated]** threats to cause emotional pain; **[or]**

*(c)* the **[repeated]** exhibition of obsessive possessiveness or jealousy, which **[is such as to ]**constitutes a serious invasion of the complainant's privacy, liberty, integrity or security;

*~~(d)~~* ~~inducing fear;~~**[[18]](#footnote-18)**

*(d)* the wilful damaging or destruction of any property in close vicinity of a complainant;

*(e)* to harm or threaten to harm a household pet or other animal, whose welfare affects a complainant's well-being;

*(f)* to disclose or threaten to disclose a complainant's sexual orientation or other private information concerning a complainant, to others against the complainant's wishes;

*(g)* to threaten the complainant with the death or injury of another person or damage of another person's property; or

*(h)* threats to commit suicide or self-harm;”;

*(n)* by the insertion of the following definition after the definition of **“emotional, verbal and psychological abuse”**:

“**‘functionary’**, for purposes of section 2A, means—

*(a)* a medical practitioner[[19]](#footnote-19), ~~health service provider~~ health care

personnel[[20]](#footnote-20), social worker[[21]](#footnote-21), official in the employ of a public health establishment[[22]](#footnote-22), educator[[23]](#footnote-23) or a care-giver[[24]](#footnote-24); ~~or~~ and

*(b)* any other ~~person or entity~~ person—

 (i) belonging to a class or category of persons; or

(ii) who is in the employ of any class or category of entities,

designated by the Minister by notice in the *Gazette;*”; OK

**Note: It may necessary to define the categories of persons who qualify as functionaries for purposes of section 2A, which deals with reporting of incidents of domestic violence involving a child, a person with a disability or an older person and the provision of further services.**

*(o)* by the substitution for the definition of **“harassment”** of the following definition:

**Option1:**

**“ 'harassment'** means directly or indirectly engaging in **[a pattern of]** conduct that **[induces the fear of]** the respondent knows or ought to know—

*(a)* causes harm or inspires the reasonable belief that harm may be caused to **[a]** the complainant or a related person by unreasonably **[including]**—

**[*(a)*]**(i) **[repeatedly]** following, watching, pursuing or accosting the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;

**[*(b)*]** (ii) **[repeatedly making telephone calls or inducing another person to make telephone calls to]** engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means whether or not conversation ensues; or

**[*(c)*]** (iii) **[repeatedly]** sending, delivering or causing the delivery of letters, **[telegrams,]** packages, facsimiles, electronic mail, texts, photos, videos, recordings or other objects to the complainant, or leaving them where they may be found by, given to, or brought to the attention of, the complainant; or

*(b)* amounts to sexual harassment of the complainant;”;

**Option 2:**

**“'harassment'** means **[engaging in a pattern of conduct that induces the fear of harm to a complainant including]**—

*(a)* **[repeatedly]** the unreasonable—

(i) following, watching, pursuing or accosting of the complainant or a related person; or

(ii) loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be,

which inspires the belief in the complainant that he or she or a related person may be harmed or their property may be damaged;

*(b)* **[repeatedly making telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues]** to repeatedly contact the complainant by means of an electronic communications service, irrespective whether or not—

(i) a conversation ensues; or

(ii) any information is conveyed to the complainant;

*(c)* **[repeatedly]** the repeated sending, delivering **[or causing the delivery of letters, telegrams,]** of packages, **[facsimiles, electronic mail]** communicationsor other objects to the complainant, or leaving them where they may be found by, given to, or brought to the attention of, the complainant;

*(d)* the unauthorised access to a complainants communications[[25]](#footnote-25) or electronic communications;

*(e)* the monitoring or tracking of the complainant's movements, activities or interpersonal associations without the complainant's consent, including, for example, by using technology;

*(f)* to enter any part of the joint residence that is exclusively used by the complainant or other property of the complainant, without the complainant's permission;

*(g)* to interfere with any property that is exclusively used by or in the complainant's possession;

*(h)* to disclose an electronic communication to the complainant, or cause the complainant to receive a communication, which—

(i) is abusive, degrading, offensive or humiliating;

(ii) violates or offends the sexual integrity or dignity of a complainant; or

(iii) inspires the belief in the complainant that he or she or a related person may be harmed or their property may be damaged; or

*(i)* to disclose an electronic communication, or to make a communication available, to another person concerning a complainant, which—

(i) contains information of a private nature;

(ii) violates or offends the sexual integrity or dignity of a complainant;

(iii) is abusive, degrading, offensive or humiliating; or

(iv) inspires the belief in the complainant that he or she or a related person may be harmed or their property may be damaged; "; OK

*(p)* by the insertion of the following definitions after the definition of **“harassment”**:

**Option 1:**

**‘harm’** means any mental, psychological, physical or economic harm;

**Option 2:**

 Omit definition of **"harm"**.[[26]](#footnote-26) OK support

 "'integrated electronic repository' means the integrated electronic repository for domestic violence protection orders and related matters, established in terms of section 6A;";**[[27]](#footnote-27)**

*(q)* by the substitution for the definition of **“intimidation”** of the following definition:

**Option 1:**

“**'intimidation'[[28]](#footnote-28)** means uttering or conveying a threat to, or causing a complainant to receive a threat, which **[induces fear]** causes harm;”;

**Option 2:**

“**'intimidation'** means uttering or conveying a threat to, or causing a complainant to receive a threat, or to expose the complainant to any conduct, which **[induces fear]** has the effect that a complainant fears for her or his own safety or damage of her or his property;”;

**Option 3:**

“**'intimidation'** means **[uttering or conveying a threat to, or causing a complainant to receive a threat, which induces fear]**—

*(a)* physical violence, or damage to property belonging, to a complainant or any other person;

*(b)* threats of physical violence, or damage to property belonging, to a complainant or any other person; or

*(c)* to deprive the complainant or any other person of their liberty or threatening to do so,

where such conduct is intended to compel a complainant to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing;";

*(r)* by the insertion of the following definition after the definition of “member of the South African Police Service”:

“ **‘Minister’** means the Cabinet member responsible for the administration of justice;”;

(....) by the insertion of the following definition after the definition of **"peace officer"**:

 "'**person in a close relationship**" means a relationship between the complainant and any other person, which the court, with regard to the following criteria—

*(a)* the degree of trust between the persons;

*(b)* the level of each person’s dependence on, and commitment to, the other person;

*(c)* length of time for which the relationship has existed;

*(d)* frequency of contact between the persons; and

*(e)* the degree of intimacy between the persons,

would consider as a person in a close relationship with the complainant;";[[29]](#footnote-29)

*(s)* by the substitution for the definition of “physical abuse” of the following definition:

 **Option 1:**

“**'physical abuse'** **[means any act or threatened act of]**includes—

*(a)* physical violence or threats of physical violence towards a complainant;

*(b)* to deprive the complainant of his or her liberty or threatening to do so;

*(c)* to administer, attempts to administer or threatens to administer—

(i) any dependence-producing substance, dangerous dependence-producing substance or undesirable dependence-producing substance/**drug**[[30]](#footnote-30)as contemplated in section 1(1) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992);

(ii) any Scheduled substance as contemplated in section 22A of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), that affects a complainant's judgement or decision-making abilities or is harmfull to the health or wellbeing of the complainant; or

(ii) any chemical or other substance that is harmfull to the health or wellbeing of the complainant,

to a complainant without the complainant's permission; or

*(d)* withholding or threatening to withhold a complainant's medication;

*(t)* by the insertion of the following definitions after the definition of “protection order”:

“**‘related person’** means any member of the family or household of a complainant, or a person in a close relationship with the complainant;

**'related person abuse**' means to—

*(a)* threaten the complainant with the causing of physical violence to, or the damage of property of, a related person;

(*b*) threaten a related person with physical violence or causing damage to the property of, such a person;

**NEW***:(c)*threaten a related person with the causing of physical violence to, or the damage of property of, a complainant; or

*(d)* commit an act of physical violence against or to cause damage to property of a related person,

where such actions can in the circumstances be regarded as abuse to cause harm to the complainant; OK

(...) by the substitution for the definitions of "residence” and "respondent" of the following definitions, respectively:

"'**residence**' means/includes any part of any structure, including a building, house, room, shed, hut, tent, mobile home, caravan, boat or other place, that is used as a place of residence by a natural person, irrespective whether or not other persons also occupy that structure;

**New proposal: 'respondent'** means any person who is or has been in a domestic relationship with a complainantand who—

*(a)* has committed or allegedly committed; or

*(b)* has used or allegedly used a co-respondent to commit or allegedly to commit,[[31]](#footnote-31)

an act of domestic violence against the complainant;

 *(u)* by the substitution for the definition of “sexual abuse” of the following definition:

“ **'sexual abuse'** means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant, irrespective of whether or not such conduct constitutes a sexual offence as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);”;

*(v)* by the insertion of the following definition after the definition of “sexual abuse”:

“ **'sexual harassment'** means any—

*(a)* unwelcome sexual attention from a respondent who knows or ought reasonably to know that such attention is unwelcome;

*(b)* unwelcome explicit or implicit behaviour, suggestions, gestures, remarks made, communications send or delivered, or electronic communications disclosed, to the complainant*—*

(i) of a sexual nature; or

(ii) regarding the complainant’s or related person's sexual orientation, gender or gender expression,

 by a respondent, that have the effect of offending, intimidating or humiliating the complainant;

*(c)* implied or expressed promise of reward made to the complainant if he or she complies with a sexually oriented request; or

*(d)* implied or expressed threat of reprisal made to, or actual reprisal against, the complainant for refusal to comply with a sexually oriented request;”;

*(w)* by the insertion after the definition of **“sheriff”** of the following definition:

**Option 1:**

 “‘**spiritual abuse**’ means—

*(a)* ridiculing or insulting the complainant's religious or spiritual beliefs;

*(b)* preventing the complainant from practicing his or her religious or spiritual beliefs;

*(c)* using the complainant's religious or spiritual beliefs to control, manipulate, shame or abuse him or her; or

*(d)* using religious texts or beliefs as a pretext to justify, minimise or rationalise abusive behaviour against a complainant;";

**It must be remembered that this category of conduct must take place: (i) in a domestic relationship and (ii) between a complainant and respondent. It won't apply where these requirements are not present. Section 15(1) of the 1996 Constitution guarantees freedom of conscience, religion, thought, belief and opinion. In Prince v President of the Law Society of the Cape and others (CCT 36/00) it was decided that the Drugs Act infringe upon the freedom of religion of Rastafarians, but the prohibition against cannabis is justified since it protects others against the harms associated with cannabis; and in Freedom of Religion South Africa v Minister of DOJ (Case CCT 320/17), where the defence of moderate and reasonable chastisement by parents was before the court, the impression created by the judgment is to the effect that, the right to be free from all forms of violence (s 12(1)(c))/ human dignity (s 10), trumps the right of freedom of religion.**

**Option 2:[[32]](#footnote-32)**

"‘spiritual abuse’ means—

*(a)* advocating hatred against the complainant because of his or her religious or spiritual beliefs, that constitutes incitement to cause harm to the complainant;

*(b)* preventing the complainant from exercising his or her constitutional right to freedom of conscience, religion, thought, belief and opinion, including to give external manifestation to his or her religious or spiritual convictions and beliefs; or

*(c)* using/manupilating the complainant’s religious or spiritual convictions and beliefs to justify or rationalise abusing the complainant;";

**Option 3: Delete**

*(x)* by the deletion of the definition of **“stalking”**;

*(y)* by the addition after the definition of **“this Act”** of the following definition:

“**‘weapon’** means—

*(a)* any airgun, ammunition, imitation firearm, muzzle loading firearm, firearm or handgun as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000); or

*(b)* any object **\*[[33]](#footnote-33)**, other than that which is referred to in paragraph *(a)*, which is likely to inflict grievous bodily harm or a dangerous wound, if it were used to commit an assault.”.

**Insertion of sections 2A and 2B in Act 116 of 1998**

**3.** The following sections are hereby inserted in the principal Act after section 2:

 **"Obligations of functionaries relating to domestic violence**

 **2A.** (1) A functionary, who in the course of the performance of his or her duties or the exercise of his or her functions obtains information which, after evaluation by him or her, causes him or her to believe or suspect on reasonable grounds, that a child, a person with a disability or an older person, may be a complainant as contemplated in section 1—

*(a)* must without delay—

(i) complete a report in the prescribed form setting out the reasons for such believe or suspicion; and

(ii) in the prescribed manner submit the report to—

 *(aa)* a social worker; or

*(bb)* the South African Police Service;

*(b)* must conduct a risk assessment as prescribed in terms of section 18B; and

*(c)* may, after the evaluation of the risk assessment referred to in paragraph *(b),* provide or refer the complainant for further services as prescribed in section 18B.

(2) A functionary referred to in subsection (1)—

*(a)* who makes the report, referred to in subsection (1)*(a)*, in good faith, is not liable to civil, criminal or disciplinary action on the basis of the report, despite any law, policy or code of conduct prohibiting the disclosure of personal information; and

*(b)* is entitled to have his or her identity kept confidential, unless the interests of justice require otherwise.

**Obligation to report domestic violence and to provide information**

 **2B.** (1) In circumstances, other than those contemplated in section 2A(1), an adult person who knows, or believe or suspect on reasonable grounds, that an act of domestic violence has been committed against a child, a person with a disability or an older person, must report such knowledge, belief or suspicion as soon as possible, to a social worker or the South African Police Service.

 (2) The report referred to in subsection (1) must—

*(a)* be made in the prescribed form;

*(b)* set out the reasons for such knowledge, belief or suspicion; and

*(c)* in the prescribed manner be submitted to a social worker or the South African Police Service.

 (3) A person referred to in subsection (1)—

*(a)* who makes the report in good faith, is not liable to civil, criminal or disciplinary action on the basis of the report, despite any law, policy or code of conduct prohibiting the disclosure of personal information; and

*(b)* is entitled to have his or her identity kept confidential, unless the interests of justice require otherwise.

(4) A person who fails to comply with subsection (1), is guilty of an offence.".[[34]](#footnote-34) - Consider later option no crim offence

**Substitution of section 3 of Act 116 of 1998**

 **4.** The following section is hereby substituted for section 3 of the principal Act:

“**Arrest by peace officer without warrant**

 **3.** (1) A peace officer who attends the scene of an incident of domestic violence[[35]](#footnote-35), may without a warrant, arrest any respondent **(person is used in the Bill)** **[at the scene of an incident of domestic violence whom he or she]** who such peace officer reasonably suspects of having committed **[an offence containing an element of violence against a complainant]**—

*(a)* an act of domestic violence which constitutes an offence in terms of any law; or

*(b)* an offence referred to in section 17(1)*(a).*

**Option 1:**

 (2) A peace officer must arrest a person who is reasonably suspected of having committed an act of domestic violence where physical violence is involved.

**Option 2:**

(2) A peace officer must, without a warrant, arrest any **[respondent]** **{person} – (will include the respondent)** at the scene of an incident of domestic violence who he or she on reasonable **[suspects]** grounds believes of having committed an act of domestic violence**[[36]](#footnote-36)** which constitutes an offence containing an element of violence against a complainant.

**Option3:**

(2) A peace officer, who attends the scene of an incident of

domestic violence, must arrest any **{respondent}[[37]](#footnote-37)** who he or she on reasonable grounds believes/ **suspects** of having committed an offence containing an element of violence against a complainant.

 (3) A peace officer contemplated in subsection (1) or (2), who is not a member of the South African Police Service, must—

*(a)* where necessary, make arrangements for the complainant to obtain medical attention;

*(b)* where a protection order has not been issued against the respondent, or where there is no pending application for a protection order against that respondent—

(i) provide the complainant with a prescribed list containing the names and contact particulars of accessible shelters and public health establishments;

(ii) if it is reasonably possible to do so, hand a notice containing information as prescribed to the complainant in the official language of the complainant's choice;

(iii) if it is reasonably possible to do so, explain to the complainant the content of such notice, including the remedies at the complainant's disposal in terms of this Act and the right to lodge a criminal complaint, if applicable; and

*(c)* provide such further assistance as prescribed in terms of section 18B.”.

**Insertion of section 3A in Act 116 of 1998**

 **5.** The following section is hereby inserted in the principal Act after section 3:

**“Entering of private residence for purposes of obtaining evidence**

**3A.** (1) If a member of the South African Police Service—

*(a)* receives a report that an offence containing an element of physical violence has allegedly been committed during an incident of domestic violence; and

*(b)* reasonably suspects that a person who may furnish information regarding that alleged offence is in any private residence[[38]](#footnote-38),

that member may, notwithstanding the proviso to section 26 of the Criminal Procedure Act, 1977, without a warrant, enter that residence for the purposes of interrogating that person and obtaining a statement from him or her.

 (2) Any member referred to in subsection (1)—

*(a)* must audibly demand admission to the residence and notify of the purpose for which the member seeks to enter that residence; and

*(b)* may, if an occupier of the residence does not provide admission to the residence, use such force as may be reasonably necessary to overcome any resistance against entry to the residence, including the breaking of any door or window of that residence.”.

**Substitution of section 4 of Act 116 of 1998**

 **6.** The following section is hereby substituted for section 4 of the principal Act:

 “**Application for protection order**

**4.** (1) *(a)* Any complainant may, on an *ex parte* basis, in the prescribed form and manner, apply to the court for a protection order.

 *(b)* (i) Subject to subparagraph (ii), the application referred to in paragraph *(a)* must be lodged—

*(aa)* with the clerk of the court; or

*(bb)* electronically, by submitting the application to an electronic address,[[39]](#footnote-39)

of the court having jurisdiction.

 (ii) In the case of an urgent application outside ordinary court hours or on a day which is not an ordinary court day, the application may, subject to any direction of the court, be submitted diretly to the court.

 (2) If the complainant or a person referred to in subsection (3) is not represented by a legal representative, the clerk of the court must inform the complainant or person, in the prescribed manner of—

*(a)* **[of]** the relief available in terms of this Act; and

*(b)* **[of]** the right to also lodge a criminal complaint against the respondent, if a criminal offence has been committed by the respondent.

(3) *(a)* Notwithstanding the provisions of any other law, the application for a protection order may, subject to paragraph *(b)*, be brought on behalf of the complainant by **[any other]** another person**[, including a counsellor, health service provider, member of the South African Police Service, social worker or teacher,]** who has a material interest in the wellbeing of the complainant **[: Provided that the application must be brought with the written consent of the complainant, except in circumstances where the complainant is—**

***(a)* a minor;**

***(b)* mentally retarded;**

***(c)* unconscious; or**

***(d)* a person whom the court is satisfied is unable to provide the required consent]**.

*(b)*An application referred to in paragraph *(a)* must be brought with the written consent of the complainant, except in circumstances where the complainant is—

(i) a child who is under the age of 16 years, if the court considers the application to be in the best interests of the child; or

(ii)a person who, in the opinion of the court, is unable to provide the required consent.

 (4) Notwithstanding the provisions of any other law, any **[minor]** child, or any person **or a representative of an approved organisation[[40]](#footnote-40)** on behalf of a **[minor]** child, may apply to the court for a protection order without the consent or assistance of a parent, guardian or any other person.

(5) The application referred to in subsection (1)*~~(b)~~*may be **[brought]** considered by the court, outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied, from information provided in the application, that a reasonable belief exists, that the complainant is suffering or may suffer **[undue hardship]** harm, if the application is not dealt with immediately. Preferred option alt option

**~~Option 2:~~**

~~(5) The application referred to in subsection (1)~~*~~(b)~~*~~(ii) may be~~ **~~[brought]~~** ~~considered by the court, outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied from information provided in the application that—~~

*(a)* *prima facie* evidence exists that the respondent is committing or has committed an act of domestic violence against the complainant;

*~~(b)~~* ~~a reasonable belief exists, that the complainant is suffering or may suffer~~ **~~[undue hardship]~~** ~~harm as a result of the act of domestic violence referred to in paragraph~~ *~~(a)~~*~~; and~~

*~~(c)~~* ~~the complainant may suffer undue hardship, if the application is not dealt with immediately. Preferred option~~

(6) Supporting affidavits by persons who have knowledge of the matter concerned may accompany the application.

(7) *(a)* The clerk of the court must capture all applications referred to in subsection (1)*(b)* and such other information as may be prescribed in the integrated electronic repository.

*(b)* The **[application and affidavits must be lodged with the]** clerk of the court **[who shall forthwith]** must ~~immediately~~**[[41]](#footnote-41)** submit [the] an application referred to in subsection (1)*(b)*(i) and supporting affidavits to the court.”.

**Insertion of sections 4A in Act 116 of 1998**

 **.....** The following sections are hereby inserted in the principal Act after section 4:

"**Domestic violence safety monitoring notice**

 **4A.** (1) A complainant, who shares a joint residence with the respondent, may—

*(a)* simultaneously with the application for a protection order in terms of section 4(1) or at any stage before the court issue a final protection order or discharge the matter in terms of section 6; or

*(b)* where a final protection order contemplated in section 6(4), is in force,

in the prescribed form and manner apply to the court for the issuing of a domestic violence safety monitoring notice.

 (2) The application referred to in subsection (1) must be lodged—

*(a)* with the clerk of the court; or

*(b)* electronically, by submitting the application to an electronic address,

of the court having jurisdiction.

 (3) Supporting affidavits by persons who have knowledge of the matter concerned may accompany the application.

 (4) The clerk of the court must capture all applications referred to in subsection (2) and such other information as may be prescribed, for purposes of this section, in the integrated electronic repository.

 (5) The clerk of the court must as soon as is reasonably possible submit an application referred to in subsection (2) to the court.

 (6) The court must as soon as is reasonably possible consider an application submitted to it in terms of subsection (5) and may, for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which must form part of the record of the proceedings.

 (7) If the court is satisfied from information on oath or affirmation as set out in the application and such additional evidence contemplated in subsection (6), that—

*(a)* there are reasonable grounds for believing that the complainant and the respondent share a joint residence; and

 *(b)* there are reasonable grounds to suspect that the respondent poses a threat to the complainant's personal safety,

the court may issue a domestic violence safety monitoring notice in the prescribed form.

 (8) A court may in terms of a domestic violence safety monitoring notice, order the station commander of a police station within area of jurisdiction of the court to direct a member of the South African Police Service under his or her command for the period specified in the notice, and subject to any conditions specified in the notice—

*(a)* to contact the complainant at regular intervals by means of an electronic service at an electronic address as specified in an Annexure to the notice and to enquire about the complainant wellbeing;

*(b)* at regular intervals, to visit the joint residence and to see and to communicate in private with the complainant; and

*(c)* where a member is prevented from seeing the complainant, to—

(i) enter the joint residence to see and to communicate in private with the complainant; and

(ii) overcome resistance against such entry by using as much force as is reasonably required by the circumstances, including breaking a door or window of the premises.

 (9) The notice must be served on the station commander and the respondent, in the prescribed manner: Provided that the Annexure referred to in subsection (8)*(a)*, may not be disclosed to the respondent.

 (10) For purposes of subsection (8)*(b)* and *(c)*, a member must execute the notice in the prescribed manner.

 (11)At the expiry of the period for which the notice was issued, a report containing the prescribed information must be filed with the clerk of the court in the prescribed manner.".**\*[[42]](#footnote-42)**

**Substitution of section 5 of Act 116 of 1998, as amended by section 19 of Act 55 of 2003**

 **7.** The following section is hereby substituted for section 5 of the principal Act:

 “ **Consideration of application and issuing of interim protection order**

**5.** (1) The court must as soon as is reasonably possible consider an application submitted to it in terms of section 4(1)*(b)*(ii) or (7) and may, for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which **[shall]** must form part of the record of the proceedings.

(1A) Where circumstances permit, a court that considers an application referred to in subsection (1), may cause an investigation to be carried out—

*(a)* **[and]** where a Family Advocate is available, **[a court may,]** in the circumstances as may be prescribed in the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), **[when considering an application contemplated in subsection (1), cause an investigation to be carried out]** by a Family Advocate contemplated in the Mediation in Certain Divorce Matters Act, 1987, in whose area of jurisdiction that court is, with regard to the welfare of any **[minor or dependent]** child affected by the proceedings in question, whereupon the provisions of that Act apply with the changes required by the context; or

*(b)* by a designated social worker as contemplated in section 47 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, whereupon the provisions of that Act apply with the changes required by the context.

 (2) If the court is satisfied that—

*(a)* there is *prima facie* evidence that the—

**[*(a)*]**(i)**[the]** respondent is committing, or has committed an act of domestic violence; **[and]**

**[*(b)*]**(ii) **[undue hardship may be suffered by the]** complainant is suffering or may suffer harm as a result of such domestic violence**[ if a protection order is not issued immediately,]**; and

*(b)* the issuing of a protection order is immediately necessary to protect the complainant against the harm contemplated in paragraph *(a)*(ii),

the court must, notwithstanding the fact that the respondent has not been given notice of the proceedings contemplated in subsection (1), issue an interim protection order in the prescribed form against the respondent**[, in the prescribed manner]**.

 (3) *(a)* **[An]** Upon the issuing of an interim protection order, **[must]** the court must direct that—

(i) certified copies of the application referred to in section 4(1)*(b)*, and any supporting affidavit that accompanied the application;

(ii) the record of any evidence noted in terms of subsection (1); and

(iii) the original interim protection order issued in terms of subsection (2),

be served on the respondent in the prescribed manner**[ and must call upon the respondent to show cause on the return date specified in the order why a protection order should not be issued]** by the clerk of the court, sheriff or peace officer identified by the court.

 *(b)* **[A copy of the application referred to in section 4 (1) and the record of any evidence noted in terms of subsection (1) must be served on the respondent together with the interim protection order]** An interim protection order must call on the respondent to show cause on the return date specified in the order why the interim protection order should not be made final.

 *(c)* The clerk of the court must immediately, upon the issuing of an interim protection—

(i) in the prescribed form and manner notify the complainant thereof; and

(ii) capture a copy of the interim protection order on the integrated electronic repository of protection orders.

(4) *(a)* If the court does not issue an interim protection order in terms of subsection (2), the court must direct the clerk of the court, to cause certified copies of the application concerned and any supporting affidavits to be served on the respondent in the prescribed manner, together with a prescribed notice calling on the respondent to show cause on the return date specified in the notice why a protection order should not be issued.

*(b)* Upon service or upon receipt of a return of service of the documents referred to in paragraph *(a)*, on the respondent, the clerk of the court must immediately capture the return of service in the integrated electronic repository of protection orders.

(5) *(a)* The return dates referred to in subsections (3)**[*(a)*]***(b)* and (4)*(a)* may not be less than 10 days after service has been effected upon the respondent: Provided that the return date referred to in subsection (3)**[*(a)*]***(b)* and (4)*(a)* may be anticipated by the respondent upon not less than 24 hours' written notice to the complainant and the court.

*(b)* The clerk of the court must capture the written notice in the integrated electronic repository of protection orders.

(6) An interim protection order **[shall have no]** is of force and effect **[until it has been served on]** from the time the existence and content of the order have been brought to the attention of the respondent.

(7) Upon service or upon receipt of a return of service of **[an interim protection order]** the documents referred to in subsection (3)*(a)*, on the respondent, the clerk of the court must **[forthwith]** immediately—

*(a)* capture the return of service in the integrated electronic repository of protection orders;

*(b)* in the prescribed form and manner notify the complainant thereof; and

*(c)* cause—

**[*(a)*]**(i) a certified copy of the interim protection order; and

**[*(b)*]**(ii) the original warrant of arrest contemplated in section 8(1)*(a)*,

to be served on the complainant in the prescribed manner.

 (8) Upon service or upon receipt of a return of service of the documents referred to in subsection (7)*(c)*, on the complainant, the clerk of the court must immediately—

*(a)* capture the return of service in the integrated electronic repository of protection orders; and

*(b)* in the prescribed manner, forward certified copies of the interim protection order and of the warrant of arrest contemplated in section 8(1)(a) to the police station of the complainant's choice.

 (8) An interim protection order issued in terms of this sectionremains in force until it is set aside by a competent court.”.

**Insertion of sections 5A, 5B and 5C in Act 116 of 1998**

 **8.** The following sections are hereby inserted in the principal Act after section 5:

 " **Attendance of witnesses**

**5A.** (1) The court may, in the prescribed manner and at any stage of proceedings under this Act, cause to be subpoenaed any person as a witness at those proceedings or to provide any book, document or object, if the evidence of that person or book, document or object appears to the court essential to the just decision of the case.

 (2) *(a)* A person who is subpoenaed as provided for in subsection (1) must attend the proceedings and remain in attendance at the proceedings until excused by the court.

 *(b)* A person who—

(i) is in attendance at any proceedings under this Act, though not subpoenaed as a witness; and

(ii) is warned by the court to remain in attendance at the proceedings,

 must remain in attendance until excused by the court.

(3) Any person who is subpoenaed in terms of subsection (1) or warned in terms of subsection (2) to attend proceedings and who fails to—

*(a)* attend or to remain in attendance;

*(b)* appear at the place and on the date and at the time to which the proceedings in question may be adjourned;

*(c)* remain in attendance at those proceedings as so adjourned; or

*(d)* produce any book, document, object or thing specified in the subpoena,

is guilty of an offence.

**Electronic communications service provider to furnish particulars to court**

**5B.** (1) If an application for a protection order is made in terms of section 4 and it is necessary to determine whether an electronic communication, which was used to commit an act of domestic violence, was disclosed by the respondent, the court may—

*(a)* adjourn the proceedings to any time and date on the terms and conditions which the court deems appropriate; and

*(b)* issue a direction in the prescribed form, directing an electronic communications service provider, that is believed to be able to furnish such particulars, to furnish the court in the prescribed manner by means of an affidavit in the prescribed form with—

(i) the electronic communications identity number from where the electronic communication originated;

(ii) the name, surname, identity number and address of the person to whom the electronic communications identity number has been assigned;

(iii) any information which indicates that the electronic communication was or was not sent from the electronic communications identity number of the person to the electronic communications identity number of the complainant;

(iv) any information that is available to an electronic communications service provider that may be of assistance to the court to identify the person who disclosed the electronic communication or the electronic communications service provider, that provides a service to that person;

(v) any information that is available to an electronic communications service provider which may be of assistance to the court to identify the electronic communications service provider whose service is used to host or was or is used to disclose the data message in questions; or

(vi) an assessment whether or not the electronic communications service provider is in a position—

*(aa)* to remove the electronic communication or a link to the electronic communication; or

*(bb)* to disable access to such electronic communication or a link to such electronic communication.

(2) If the court issues a direction in terms of subsection (1) the court must direct that the direction be served on the electronic communications service provider in the prescribed manner: Provided, that if the court is satisfied that the direction cannot be served in the prescribed manner, the court may make an order allowing service to be effected in the form and manner specified in that order.

(3) *(a)* The information referred to in subsection (1)*(b)* must be provided to the court within five ordinary court days from the time that the direction is served on an electronic communications service provider.

 *(b)* An electronic communications service provider on which a direction is served, may in the prescribed manner by means of an affidavit in the prescribed form apply to the court for—

(i) an extension of the period of five ordinary court days referred to in paragraph *(a)* for a further period of five ordinary court days on the grounds that the information cannot be provided timeously; or

(ii) the cancellation of the direction on the grounds that—

*(aa)* it does not provide an electronic communications service to the complainant or the respondent;

*(bb)* the requested information is not available in the records of the electronic communications service provider; or

*(cc)* its service is not used to host or was or is not used to disclose the electronic communication in question.

(4) After receipt of an application in terms of subsection (3)*(b)*, the court—

*(a)* must consider the application;

*(b)* may, in the prescribed manner, request such additional evidence by way of an affidavit from the electronic communications service provider as it deems fit;

*(c)* must give a decision in respect thereof; and

*(d)* must inform the electronic communications service provider in the prescribed form and in the prescribed manner of the outcome of the application.

(5) *(a)* The court may, on receipt of an affidavit from an electronic communications service provider which contains the information referred to in subsection (1)*(b)*, consider the issuing of an interim protection order in terms of section 5(2) against the respondent on the date to which the proceedings have been adjourned.

*(b)* Any information furnished to the court in terms of subsection (1)*(b)* forms part of the evidence that a court may consider in terms of section 5(1).

(6) *(a)* If the court issues a protection order, the court must at the same time, in the prescribed form and manner, issue an order to theelectronic communications service provider whose electronic communications service is used to host or disclose the electronic communication which was used to commit an act of domestic violence, to remove or disable access to the electronic communications.

 *(b)* An electronic communications service provider who is ordered to remove or disable access to an electronic communication in terms of paragraph *(a)*, may, within 14 days after the order has been served on it in terms of paragraph (a), in the prescribed form and manner, apply to the court for the setting aside or amendment of the order referred to in paragraph *(a)*.

*(c)* The court must as soon as is reasonably possible consider an application submitted to it in terms of paragraph *(b)* and may for that purpose, in the prescribed form and manner, request such additional evidence by way of an affidavit from the electronic communications service provider as it deems fit, which must form part of the record of the proceedings.

*(d)* The court may if good cause has been shown for the variation or setting aside of the order, issue an order to this effect and in the prescribed form and manner inform the electronic communications service provider of the outcome of the application.

(7) An electronic communications service provider must, within 48 hours after providing the information referred to in subsection (1)*(b)* to the court, by means of an electronic communication, inform the respondent of the—

*(a)* information that is to be provided to the court;

*(b)* reference number of the direction; and

*(c)* address of the court who issued the direction.

 (8) (*a)* The ~~Director-General must, in consultation with the~~ Director-General: Communications and Digital Technologies, must compile and maintain a list of electronic communications service providers that can provide the courts with the information referred to in subsection (1)*(b)*.

*(b)* The list referred to in paragraph *(a)* must contain the following particulars of each such electronic communications service provider:

(i) The name and physical and postal addresses;

(ii) an electronic mail address;

(iii) a telephone and facsimile number; and

(iv) the names of persons who are responsible for providing the information referred to in subsection (1)*(b)*.

*(c)* An electronic communications service provider must, in the prescribed manner and without undue delay, bring any change of any of the particulars referred to in paragraph *(a)* to the attention of the Director-General: Communications and Digital Technologies.

*(d)* The Director-General: Communications and Digital Technologies must, in the prescribed manner and without undue delay, make the list referred to in paragraph *(a)* and any subsequent amendments thereto available to all courts.

(9) The Minister must, by notice in the *Gazette*, prescribe reasonable tariffs of compensation payable to electronic communications service providers for—

*(a)* providing the information referred to in subsection (1)*(b)*;

*(b)* providing the information to the respondent as contemplated in subsection (7); and

*(c)* removing or disabling access to the electronic communications which was used to commit an act of domestic violence, as contemplated in subsection 6*(a)*.

(10) *(a)* The complainant is liable for the costs related to the furnishing of the information and the removing or disabling access to the electronic communications, referred to in subsection (9)*.*

*(b)* The court may, at any time hold an inquiry into—

(i) the means of the complainant; and

(ii) any other circumstances which, in the opinion of the court, should be taken into consideration,

to determine the ability of the complainant to pay the costs referred to in paragraph *(a)*.

*(c)* At the conclusion of the inquiry referred to in paragraph *(b)* the court may make such order as the court deems fit relating to the payment of the costs referred to in paragraph *(a)*, including an order directing the State, subject to section 15, to pay such costs within available resources, in the prescribed manner.

*(d)* The court may, if it has ordered the State to pay the costs referred to in paragraph *(c)*, direct who must refund the costs so paid by the State.

(11) Any electronic communications service or employee of an electronic communications service provider who—

*(a)* fails to furnish the required information within five ordinary court days from the time that the direction is served on such electronic communications service provider to a court in terms of subsection (3)(*a*) or such extended period allowed by the court in terms of subsection (3)(*b*);

*(b)* makes a false statement in an affidavit referred to in subsection (1)(*b*), (3)(*b*), (6)*(b)* or *(c),* in a material respect;

*(c)* fails to comply with an order to remove or disable access to the electronic communications in terms of subsection 5*(c) or* any variation in terms of subsection (6)*(d)* thereof*;*

*(d)* fails to comply with subsection (7),

is guilty of an offence.

(12) For purposes of this section **"host"** means to store an electronic communication on an electronic communications network that is used to provide an electronic communications service, where it can be viewed, copied or downloaded.

 **Existing ~~orders~~ and reciprocal orders and applications**

 **5C.** (1) The court must before it issues an interim protection order referred to in section 5(2) or a final protection order referred to in section 6(1) or (4), establish whether there is any other order against the complainant or respondent, which was previously issued by a court and may have a bearing on the application before the court.

(2) Where it is established by the court, that considers an application in terms of section 5(1), that there is another application pending between the same parties, the court must—

*(a)* order that both applications be dealt with together;

*(b)* adjourn the matter for a hearing as contemplated in section 6; and

*(c)* give directions regarding the notification of parties and service of documents.

 (3) Where existing orders are in place, the court—

*(a)* must record those orders on the court file;

*(b)* must, where it issues a protection order, or imposes any condition or makes any order which it is competent to impose or make under section 7, ensure that the protection order does not contradict any such existing orders; and

*(c)* may, where it is satisfied that urgent relief against an act of domestic violence is necessary, it may notwithstanding any other order, issue a protection order or impose any condition or make any order which it is competent to impose or make under section 7, and order that they remain in force for a limited period as it may determine in order to afford the complainant an opportunity to apply for the amendment, variation or setting aside of such order.”.

**Substitution of section 6 of Act 116 of 1998**

 **9.** The following section is hereby substituted for section 6 of the principal Act:

“**Issuing of final protection order**

**6.** (1) If the respondent does not appear on a return date contemplated in section 5(3)**[ or (4)]**, and if the court is satisfied that—

*(a)* proper service has been effected on the respondent; and

*(b)* the application contains *prima facie* evidence that the respondent has committed**[ or is committing ]**an act of domestic violence,

the court must issue a final protection order in the prescribed form.

 (1A) If the respondent does not appear on a return date contemplated in section 5(4), and if the court is satisfied that proper service has been effected on the respondent, the court must proceed to hear the matter and if the court after considering—

*(a)* any evidence previously received in terms of section 5(1); and

*(b)* such further affidavits or oral evidence as it may direct, that was adduced during the hearing, which must form part of the record of the proceedings,

finds, on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence, the court must issue a final protection order in the prescribed form.

 (2) If the respondent appears on the return date contemplated in section 5(3) or (4), in order to oppose the issuing of a protection order, the court must proceed to hear the matter and—

*(a)* consider any evidence previously received in terms of section 5(1); **[and]**

*(b)* consider such further affidavits or oral evidence as it may direct, which **[shall]** must form part of the record of the proceedings; and

*(c)* if there is a dispute of fact the court—

(i) may on application of the complainant or the respondent adjourn the proceedings to any time and date on the terms and conditions which the court deems appropriate in order to afford the party concerned the opportunity to adduce further evidence; and

(ii) must extend the interim protection order.

(2A) *(a)* If the respondent appears on the return date contemplated in section 5(3), but the complainant does not appear, the court must extend the interim protection order and the return date and the clerk of the court must notify the complainant in the prescribed form and manner of the extended date.

 *(b)* The court may discharge the interim protection order if the complainant does not appear on the extended date.

(2B) *(a)* If neither the complainant nor respondent appears on the return date contemplated in section 5(3) or (4), and if the court is satisfied that—

(i) proper service has been effected on the respondent; and

(ii) the application contains *prima facie* evidence that the respondent has committed an act of domestic violence,

the court may—

*(aa)*  extend the interim protection order and the return date for the hearing of oral evidence;

*(bb)* set a new return date for the hearing of oral evidence where no interim order is in place; or

*(cc)* discharge the matter.

*(b)* The clerk of the court must, in the prescribed form and manner, notify the parties of the extended date.

 (3) *(a)* Sections 51A[[43]](#footnote-43) and 51C[[44]](#footnote-44) of the of the Magistrates’ Courts Act, 1944, apply to a hearing contemplated in subsection (2). OK insert

 *(b)* In instances where paragraph *(a)* does not apply, **[T]**the court may, on its own accord or **[on]** at the request of the complainantorawitness who is in a domestic relationship with the respondent **[, if it is of the opinion that it is just or desirable to do so]**, and if it is in the interests of justice to do so, order that in the examination of **[witnesses, including the]** complainant or a witness, a respondent who is not represented by a legal representative—

*(a)* is not entitled to cross-examine directly **[a person who is in a domestic relationship with the respondent]** the complainant or such a witness; and

*(b)* **[shall]** must put any question to the complainant or such a witness by stating the question to the court, and the court is to repeat the question accurately to the **[respondent]** complainant or witness.

(4) The court must, after a hearing as contemplated in subsection (2), issue a final protection order in the prescribed form if it finds, on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence.

(5) **[Upon]** On **[the]** issuing **[of]** a final protection order the **[clerk of the]** court must **[forthwith in the prescribed manner cause]** direct that—

*(a)* the original of such order **[to]** must be served on the respondent; and

*(b)* a certified copy of such order, and the original warrant of arrest contemplated in section 8(1)*(a)*, **[to]** must be served on the complainant,

in the prescribed manner by the clerk of the court, sheriff or peace officer identified by the court.

(6) *(a)* 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.

 *(b)* The clerk of the court must capture—

(i) the final protection order;

(ii) the warrant of arrest contemplated in section 8(1)*(a)*; and

(iii) the return of service of—

*(aa)* the original final protection order on the respondent; and

*(bb)* a copy of the final protection order and original warrant of arrest on the complainant,

on the integrated electronic repository of protection orders.

(7) Subject to the provisions of **[section]** sections 5C(3)*(c)* and 7(7)*(b)*, a final protection order issued in terms of this section—

*(a)* is of force and effect from the time the existence and content of the order have been brought to the attention of the respondent; and

*(b)* remains in force until it is set aside, and the execution of such order **[shall]** is not **[be]** automatically suspended upon the noting of an appeal.”.

**Insertion of section 6A in Act 116 of 1998**

 **10.** The following section is hereby inserted in the principal Act after section 6:

**"Establishment of an integrated electronic repository for domestic violence protection orders and related matters**

 **6A.** (1) The ~~Minister~~ Director-General must, develop, establish and maintain the integrated electronic repository for domestic violence protection orders.

 (2) *(a)* The Director-General must appoint or designate a fit and proper person, with due regard to his or her relevant expertise, experience, conscientiousness and integrity, as administrator of the integrated electronic repository.

 *(b)* The administrator of the integrated electronic repository—

(i) must carry out the administrative duties relating to the functioning of the integrated electronic repository;

(ii) must manage, and exercise administrative control over the integrated electronic repository;

(iii) must ensure compliance with any directive issued in terms of subsection (3); and

(iv) is, for purposes of the exercise of the powers, performance of the functions and carrying out of the duties conferred upon, assigned to or imposed upon him or her under this Act, accountable to the Director-General.

 (3) In achieving the objectives contemplated in subsection (1), the ~~Minister~~ Director-General must, in consultation with the administrator of the integrated electronic repository and Information Regulator, issue directives to prescribe—

*(a)* the functional requirements of the integrated electronic repository;

*(b)* the technical specifications for the integrated electronic repository;

*(c)* the specifications for the interface between the integrated electronic repository and any authorised party interfacing with the integrated electronic repository;

*(d)* the persons or categories or class of persons who will be authorised to access documents or any other electronic records contained in the integrated electronic repository;

*(e)* the standards governing the information security of the integrated electronic repository;

*(f)* the operation of the integrated electronic repository;

*(g)* the processing of information using the integrated electronic repository;

*(h)*  the secure retention and subsequent production of documents or any other electronic records, which may be required for purposes of this Act, and which must be complied with by persons interacting with the integrated electronic repository;

*(i)* the capturing of documents in the integrated electronic repository;

*(j)* any other matter which may be necessary or expedient to prescribe in order to achieve or promote the objects of the integrated electronic repository.".

Information regulator to be defined

**Amendment of section 7 of Act 116 of 1998**

 **11.** Section 7 of the principal Act is hereby amended—

*(a)* by the substitution for subsections (1) and (2) for the following subsections:

“(1) The court may, by means of a protection order referred to in section 5 or 6, prohibit the respondent from—

*(a)* committing or attempting to commit any act of domestic violence;

*(b)* enlisting the help of another person (co-respondent) to commit any such act;

*(c)* 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;

*(d)* entering a specified part of such a shared residence;

*(e)* entering the complainant's residence;

*(f)* entering the complainant's **[place of employment]** workplace or place of studies;

*(g)* preventing the complainant who ordinarily lives or lived in a shared residence as contemplated in **[subparagraph]** paragraph *(c)* from entering or remaining in the shared residence or a specified part of the shared residence; or

*(h)* committing any other act as specified in the protection order, including the disclosure of any electronic communication or the making available of any communication, as may be specified in the protection order.

**Option:**

*(h)* disclosing of any electronic communication or the making available of any communication, as may be specified in the protection order; or

*(i)* committing any other act as specified in the protection order.

(2) The court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant, including—

*(a)* an order—

(i) to seize any **[arm or dangerous]** weapon in the possession or under the control of the respondent, as contemplated in section 9; and

(ii) that a peace officer must accompany the complainant to a specified place to assist with arrangements regarding the collection of personal property; or

*(b)* the making of a recommendation that the complainant should approach the relevant police station to investigate the matter with the view to the possible institution of a criminal prosecution against the respondent.”;

*(b)* by the insertion of the following subsection after subsection (4):

“(4A) The court may conduct an enquiry in respect of the respondent in terms of section 35 of the Prevention and Treatment for Substance Abuse Act, 2008 (Act No. 70 of 2008) and commit the respondent to a treatment centre for substance abuse.”.

*(c)* by the substitution for subsection (5) of the following subsection:

“(5) *(a)* The physical, home and work address and contact details of the complainant or related person to whom the protection order relates must be omitted from the protection order, unless the nature of the terms of the order necessitates the inclusion of such **[address]** particulars.

*(b)* The court may issue any directions to ensure that the complainant's or related person’s physical, home and work address and contact details [is] are not disclosed in any manner which may endanger the safety, health or wellbeing of the complainant or related person.

*(c)* Where the complainant or related person is a child, the complainant's or related person’s physical, home and work addresses must not be disclosed until a children’s court inquiry into the matter has been held.”; and

*(d)* by the substitution for subsection (7) of the following subsection:

“(7) *(a)* The court may not refuse—

(i) to issue a protection order; or

(ii) to impose any condition or make any order which it is competent to impose or make under this section,

merely on the grounds that other legal remedies are available to the complainant.

*(b)* If the court is of the opinion that any provision of a protection order deals with a matter that should, in the interests of justice, be dealt with further in terms of any other relevant law, including the Maintenance Act, 1998 (Act No. 99 of 1998), the court must order that such a provision **~~[shall be]~~** ~~is~~ shall be in force for such limited period as the court determines, in order to afford the party concerned the opportunity to seek appropriate relief in terms of such law.”.

**Amendment of section 8 of Act 116 of 1998**

 **12.** Section 8 of the principal Act is hereby amended—

*(a)* by the substitution for subsection (1) of the following subsection:

“(1) Whenever a court issues a protection order, including an interim protection order, the court must make an order—

*(a)* authorising the issue of a warrant for the arrest of the respondent, in the prescribed form; and

*(b)* suspending the execution of such warrant subject to compliance with any prohibition, condition, obligation or order imposed in terms of section 7.”; and

*(b)* by the substitution for subsections (4) and (5) of the following subsections:

“(4) *(a)* A complainant may hand the warrant of arrest together with an affidavit in the prescribed form, wherein it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order, to any member of the South African Police Service.

*(b)* If it appears to the member concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant is suffering or may suffer **[imminent]** harm as a result of the alleged breach of the protection order by the respondent, the member must **[forthwith]** immediately arrest the respondent for allegedly committing the offence referred to in section 17(1)*(a)*.

*(c)* If the member concerned is of the opinion that there are insufficient grounds for arresting the respondent in terms of paragraph *(b)*, **[he or she]** the member must **[forthwith]** immediately hand a written notice, in the prescribed form, to the respondent which—

(i) specifies the name, the residential and work address and the occupation or status of the respondent;

(ii) calls upon the respondent to appear before a court, and on the date and at the time, specified in the notice, on a charge of committing the offence referred to in section 17(1)*(a)*; and

(iii) contains a certificate signed by the member concerned to the effect that **[he or she]** the member handed the original notice to the respondent and that **[he or she]** the member explained the import thereof to the respondent.

*(d)* The member must **[forthwith]** immediately forward a duplicate original of a notice referred to in paragraph *(c)* to the clerk of the court concerned, and the mere production in the court of such a duplicate original **[shall be]** is *prima facie* proof that the original thereof was handed to the respondent specified therein.

(5) In considering whether or not the complainant is suffering harm or may suffer **[imminent]** harm, as contemplated in subsection (4)*(b)*, the member of the South African Police Service must take into account—

 *(a)* the risk to the safety, health or wellbeing of the complainant or related person or damage of their property;

*(b)* the seriousness of the conduct comprising an alleged breach of the protection order;

*(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 a related person.”. - Awaiting final consideration.

**Substitution of section 9 of Act 116 of 1998**

 **13.** The following section is hereby substituted for section 9 of the principal Act:

 "**Seizure of [arms and dangerous] weapons**

**9.** (1) The court must order a member of the South African Police Service to seize any **[arm or dangerous]** weapon in the possession or under the control of a respondent as specified in that order, regardless of the requirements of the respondent’s employment to possess such weapon, if the court is satisfied on the evidence placed before it, including any affidavits supporting an application referred to in section 4 (1), that—

*(a)* the respondent has threatened or expressed the intention to kill or injure himself or herself, **[or]** any person in **[a]** the domestic relationship **[or]**, a related person, or any other person, whether or not by means of such **[arm or dangerous]** weapon; or

*(b)* the possession of such **[arm or dangerous]** weapon is not in the best interests of the respondent or any other person in a domestic relationship or a related person, as a result of the respondent's—

 (i) state of mind or mental condition;

 (ii) inclination to violence; or

 (iii) use of or dependence on intoxicating liquor or drugs.

(2) Any **[arm]** weapon contemplated in paragraph *(a)* of the definition of “weapon”, seized in terms of subsection (1) must be **[handed over to the holder of an office in the]** kept by the South African Police Service **[as contemplated in section 11(2)*(b)* of the Arms and Ammunition Act, 1969 (Act 75 of 1969),]** and the court must direct the clerk of the court to refer a copy of the record of the evidence concerned to the **[National Commissioner of the South African Police Service]** relevant station commander for consideration in terms of section **[11]** 102 of the **[Arms and Ammunition Act, 1969]** Firearms Control Act, 2000, and a copy of the record must be submitted to the National Commissioner of the South African Police Service.

 (3) Any **[dangerous]** weapon contemplated in paragraph *(b)* of the definition of “weapon” seized in terms of subsection (1)—

*(a)* must be given a distinctive identification mark and retained in police custody for such period of time as the court may determine; and

*(b)* **[shall]** may only be returned to the respondent or, if the respondent is not the owner of the **[dangerous]** weapon, to the owner thereof, by order of the court and on such conditions as the court may determine:

Provided that—

(i) if, in the opinion of the court, the value of the **[dangerous]** weapon so seized is below **[R200]** the amount determined by the Minister in the *Gazette* from time to time; **[or]**

(ii) if the return of the **[dangerous]** weapon has not been ordered within 12 months after it had been so seized; or

(iii) if the court is satisfied that it is in the interest of the safety of any person concerned,

the court may order that the **[dangerous]** weapon be forfeited to the State.

(4) *(a)* When a final protection order has been issued against the respondent in terms of section 6, the clerk of the court must as soon as reasonably possible, in the prescribed manner, inform the relevant station commander and National Commissioner of the South African Police Service thereof.

*(b)* The relevant station commander must, on receipt of the information contemplated in paragraph *(a)*—

(i) determine whether the respondent holds a licence, permit, competency certificate or other authorisation in terms of the Firearms Control Act, 2000, for any firearm; [and]

(ii) in terms of section 102 of the Firearms Control Act, 2000, determine whether the person is unfit to possess a firearm**[.]**; and

(iii) **[and]** inform the National Commissioner of the South African Police Service of their decision regarding the fitness of the person to possess a firearm.”.

**Amendment of section 10 of Act 116 of 1998**

 **14.** Section 10 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) *(a)* A complainant or a respondent may, upon written notice to the other party and the court concerned, apply for the variation or setting aside of a protection order referred to in section 6 in the prescribed manner.

 *(b)* The other party must, if he or she opposes the application, within 10 days of receiving the notice referred to in paragraph *(a)*, give written notice to the other party and the court setting out grounds and facts on which the application is opposed.

(2) If the court is 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, it may issue an order to this effect: Provided that the court **[shall]** may not grant such an application to the complainant unless it is satisfied that the application is made freely and voluntarily.”.

**Amendment of section 11 of Act 116 of 1998**

 **15.** Section 11 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) *(a)* No person **[shall]** may publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings.

*(b)* The court, if it is satisfied that it is in the interests of justice, may direct that any **[further]** information relating to proceedings held in terms of this Act **[shall]** may not be published: Provided that no direction in terms of this subsection applies in respect of the publication of a *bona fide* law report which does not mention the names or reveal the identities of the parties to the proceedings or of any witness at such proceedings.”.

**Amendment of section 12 of Act 116 of 1998**

 **16.** Section 12 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

 “(1) Any court within the area in which—

*(a)* the complainant permanently or temporarily resides, studies, carries on business or is employed;

*(b)* the respondent permanently or temporarily resides, carries on business or is employed; or

*(c)* the cause of action arose,

has jurisdiction to grant a protection order as contemplated in this Act.

(2) No specific minimum period is required in relation to subsection (1)*(a)*, or *(b)*.”.

**Amendment of section 13 of Act 116 of 1998**

 **17.** Section 13 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

 “(1) *(a)* Service of any document in terms of this Act must **[forthwith]** be effected immediately on the person affected by it at his or her residence or place of business, employment or study in the prescribed manner by the clerk of the court, the sheriff or a peace officer**[, or as the court may direct]**.

 *(b)* Where the complainant and respondent share the same residence, the service of documents—

(i) referred to in sections 5(3)*(a)* or(4) and 6(5)*(a)*, must be effected by hand on the respondent personally; and

(ii)referred to in sections5(7)*(b)* and 6(5)*(b)*, must be effected by hand on the complainant personally.

 *(c)* If the court is satisfied that service of any document cannot be effected in the prescribed manner, the court may make an order allowing service to be effected in the form or manner specified in that order.

**Substitution of section 15 of Act 116 of 1998**

 **18.** The following section is hereby substituted for section 15 of the principal Act:

 “**[Costs] Orders as to costs of service and directions**

**15.** (1)The court may **[only]**, having regard to the conduct of the parties as far as it may be relevant, make an order as to costs against any party if it is satisfied that such party has acted frivolously, vexatiously or unreasonably.

(2) Despite the provisions of subsection (1), the court may make an order as to costs against any party in respect of the—

*(a)* service of any process or documents;

*(b)* obtaining the information contemplated in section 5B(1)*(b)*; or

*(c)* removal or disabling of Access to Electronic Communications completed in section 5B(6).”.

**Substitution of section 16 of Act 116 of 1998**

 **19.** The following section is hereby substituted for section 16 of the principal Act:

 “**Appeal and review**

 **16.** The provisions in respect of appeal and review contemplated in the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), and the **[Supreme Court Act, 1959 (Act 59 of 1959)]** Superior Courts Act, 2013 (Act No. 10 of 2013), apply to any proceedings in terms of this Act.”.

**Amendment of section 17 of Act 116 of 1998**

**20.** The following section is hereby substituted for section 17 of the principal Act:

“**Offences**

**17.** (1) Notwithstanding the provisions of any other law, any person who—

*(a)* contravenes any prohibition, condition, obligation or order imposed in terms of section 7;

*(b)* contravenes the provisions of section 11(2)*(a)*;

*(c)* fails to comply with any direction in terms of the provisions of section11(2)*(b)*; or

*(d)* in an affidavit referred to in section 8(4)*(a)*, wilfully makes a false statement in a material respect,

is guilty of an offence and liable on conviction—

(i) in the case of an offence referred to in paragraph *(a)*—

*(aa)* if it is a first ~~[offender]~~ conviction, to a fine or imprisonment for a period not exceeding five years or to both such fine and such imprisonment**[,]**; or

*(bb)* if it is a second or subsequent ~~[offender]~~ conviction, to a fine or imprisonment for a period not exceeding 10 years; and

(ii) in the case of an offence contemplated in paragraph *(b)*, *(c)*, or *(d)*—

*(aa)* if it is a first [~~offender~~] conviction, to a fine or imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or

*(bb)* if it is a second or subsequent [~~offender~~] conviction, to a fine or imprisonment for a period not exceeding four years or to both such fine and such imprisonment.

(2) Any person who is convicted of an offence referred to in section 5A(3), is liable on conviction to a fine or imprisonment for a period not exceeding six months.

(3) Any electronic communications service provider or employee of an electronic communications service provider, who is convicted of an offence referred to in section 5B(11)*(a),* *(b)*, *(c)* or *(d)*, is liable on conviction, in the case of—

*(a)* an electronic communications service provider, to a fine not exceeding R10 000; or

*(b)* an employee of an electronic communications service provider, to a fine or imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(4) A person who is convicted of an offence referred to in section 2B(4), is liable on conviction to a fine or to imprisonment for a period not exceeding three months or to both a fine and such imprisonment.”.

**Amendment of section 18 of Act 116 of 1998, as amended by section 36 of Act 1 of 2011**

 **21.** Section 18 of the principal Act is hereby amended—

*(a)* by the substitution for subsections (1) and (2) of the following subsections:

“(1) No prosecutor **[shall]** may—

*(a)* refuse to institute a prosecution; or

*(b)* withdraw a charge,

in respect of a contravention of section 17(1)*(a)* or in respect of any offence against a person in a domestic relationship—

(i) involving the infliction of grievous bodily harm or a dangerous wound against the complainant or a related person; or

(ii) where the complainant or a related person is threatened with a weapon,

unless **[he or she has been]** authorised thereto, whether in general or in any specific case, by a Director of Public Prosecutions as contemplated in section 13(1)*(a)* of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), or a senior member of the prosecuting authority designated thereto in writing by such a Director.

(2) The National Director of Public Prosecutions referred to in section 10 of the National Prosecuting Authority Act, 1998, in consultation with the Minister **[of Justice]** and after consultation with the Directors of Public Prosecutions, must determine prosecution policy and issue policy directives regarding any offence arising from an incident of domestic violence.”; and

*(b)* by the substitution for paragraph *(a)* of subsection (4) of the following paragraph:

"*(a)* Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the national instructions referred to in subsection (3), constitutes misconduct as contemplated in the South African Police Service Act, 1995, and the Secretariat, established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, **[2010]** 2011 (Act No. 2 of 2011), must **[forthwith]** be informed immediately of any such failure reported to the South African Police Service.".

**Insertion of sections 18A and 18B in Act 116 of 1998**

 **22.** The following sections are hereby inserted in the principal Act after section 18:

 “ **Directives for clerks of court**

**18A.** (1) The Director-General must issue directives with which clerks of the court must comply in the execution of their functions in terms of this Act, and any directives so issued must be published in the *Gazette*.

(2) The Minister must submit any directives issued in terms of subsection (1) to Parliament before those directives take effect.

(3) The directives referred to in this section must provide that adequate disciplinary steps will be taken against a clerk of the court who fails to comply with any directive.

(4) Any directive issued under this section may be amended or withdrawn in like manner.

**Directives by Departments of Health, Social Development, Basic Education, Higher Education and Training and Communications and Digital Technologies**

**18B.** (1) The Directors-General: Health, Social Development, Basic Education, Higher Education and Training and Communications and Digital Technologies must—

*(a)* in consultation with the Ministers of Health, Social Development, Basic Education, Higher Education, Science and Innovation as well as Communications and Digital Technologies; and

*(b)* after consultation with the Director-General, National Director of Public Prosecutions and National Commissioner of the South African Police Service,

publish in the *Gazette* directives 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 this Act.

 (2) Without limiting the scope of the directives contemplated in subsection (1), the directives must—

*(a)* prescribe services to be provided to a complainant who is a child, a person with a disability or an older person;

*(b)* prescribe the manner in which a functionary must deal with a complainant who is a child, a person with a disability or an older person, in order to protect them against further acts of domestic violence;

*(c)* prescribe services to be provided to a complainant who is an adult person;

(*d*) provide for a public education and communication initiative to educate the public on the provisions of this Act, the obligations of the relevant functionaries, including the South African Police Services, in respect of domestic violence incidents and institutions where complaints may be lodged against a functionary or a member of the South African Police Service;

*(e)* provide for the designation of accredited shelters;

*(f)* prescribe standards and minimum conditions for the provision of services in accredited shelters; and

*(g)* prescribe the manner in which a risk assessment must be conducted in respect of a complainant to provide or refer the complainant for further services.”.

**Substitution of section 19 of Act 116 of 1998**

 **23.** The following section is hereby substituted for section 19 of the principal Act:

 “**Regulations**

**19.** (1) The Minister **[of Justice]** may make regulations regarding—

*(a)* any form required to be prescribed in terms of this Act;

**[*(b)* any matter required to be prescribed in terms of this Act; and**

***(c)* any other matter which the Minister deems necessary or expedient to be prescribed in order to achieve the objects of this Act.**

 **(2) Any regulation made under subsection (1)—**

***(a)* must be submitted to Parliament prior to publication thereof in the *Gazette*;**

***(b)* which may result in expenditure for the State, must be made in consultation with the Minister of Finance; and**

***(c)* may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding one year.]**

*(b)* financial assistance to be provided by the State—

(i) to a complainant or respondent who does not have the means to pay for fees of any service in terms of this Act; and

 (ii) to a witness who attends any proceedings in terms of this Act;

*(c)* the granting of legal aid at State expense in appropriate cases in consultation with the Legal Aid South Africa to a child to assist him or her with an application for a protection order in terms of this Act;

*(d)* any matter required to be prescribed in terms of this Act; and

*(e)* any other matter which the Minister deems necessary or expedient to be prescribed in order to achieve the objects of this Act.

 (2) Any regulation made under subsection (1)—

*(a)* must be submitted to Parliament prior to publication thereof in the *Gazette*;

*(b)* which may result in expenditure for the State, must be made in consultation with the Cabinet member responsible for finance; and

*(c)* may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding one year.”.

**Substitution of section 20 of Act 116 of 1998**

 **24.** The following section is hereby substituted for section 20 of the principal Act:

" **Amendment of laws**

**20.** The laws mentioned in the Schedule are amended to the extent indicated in the third column of the Schedule.".

**Short title and commencement**

 **25.** This Act is called the Domestic Violence Amendment Act, 2020, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**SCHEDULE**

**LAWS AMENDED**

(Section 20)

| **No. and year of law** | **Short title** | **Extent of repeal or amendment** |
| --- | --- | --- |
| Act No. 51 of1977 | CriminalProcedure Act,1977 | Section 40 of the Criminal Procedure Act, 1977, is hereby amended by—*(a)* the substitution for paragraph *(q)* of subsection (1) of thefollowing paragraph:‘‘*(q)* who is reasonably suspected of having committed an act of domestic violence as contemplated in section 1 of the Domestic Violence Act, 1998, which constitutes—(i) an offence in respect of which violence is an element **[.]**; or(ii) an offence, other than the offence referred to in subparagraph (i); or’’; and*(b)* by the addition to subsection (1) of the following paragraph:‘‘*(r)* who is reasonably suspected of having contravened section 17(1)*(a)* of the Domestic Violence Act, 1998.’’. |
| Act No. 60 of 2000 | Firearms Control Act, 2000  | Schedule 2 to the Firearms Control Act, 2000 is hereby amended by the substitution for paragraph *(e)* of Item 7 of the following paragraph:“*(e)* in terms of **[section 18(1)*(a)* of]** the Domestic Violence Act, 1998 (Act No. 116 of 1998) or the Protection from Harassment Act, 2011 (Act No. 17 of 2011).”. |
| Act No. 17 of 2011 | Protection from Harassment Act, 2011 | The Protection from Harassment Act, 2011 is hereby amended by—1. the substitution for subsection (2) of section 1 of the following subsection:

“(2) This Act does not prevent a person who may apply for relief against harassment **[or stalking]** in terms of the Domestic Violence Act, 1998 ([Act No. 116 of 1998](http://dojcdnoc-jutas/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=Advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%7bstatreg%7d&xhitlist_q=%5bfield%20folio-destination-name:'a116y1998'%5d&xhitlist_md=target-id=0-0-0-179873)), from applying for relief in terms of this Act.”; and1. the substitution for paragraph *(a)* of subsection (5) of section 10 of the following paragraph:

“*(a)* Provided that the complainant is not in possession of or not in the process of applying for a protection order against harassment **[or stalking]** as provided for in the Domestic Violence Act, 1998 ([Act No. 116 of 1998](http://dojcdnoc-jutas/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=Advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%7bstatreg%7d&xhitlist_q=%5bfield%20folio-destination-name:'a116y1998'%5d&xhitlist_md=target-id=0-0-0-179873)), the court may not refuse—1. to issue a protection order; or
2. to impose any condition or make any order,

which it is competent to impose or make under this section, merely on the grounds that other legal remedies are available to the complainant.”. |
| Act No. 10 of 2013 | Superior Courts Act, 2013 | The Superior Courts Act, 2013 is hereby amended by the substitution for subsection (1) of section 47 of the following subsection:“**[Notwithstanding any other law]** Except for an application made in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), no civil proceedings by way of summons or notice of motion may be instituted against any judge of a Superior Court, and no subpoena in respect of civil proceedings may be served on any judge of a Superior Court, except with the consent of the head of that court or, in the case of a head of court or the Chief Justice, with the consent of the Chief Justice or the President of the Supreme Court of Appeal, as the case may be.”. |

1. See definition of intimidation, *infra* [↑](#footnote-ref-1)
2. See definition of a "person in a close relationship", *infra*. [↑](#footnote-ref-2)
3. The word subjecting means among others "exposing", "put in danger", "imperiling". [↑](#footnote-ref-3)
4. **Another option:**

***(hD)* to expose a child to domestic violence;**

**Insert new definition to define what this means:**

**"expose a child to domestic violence " means to intentionally cause a child—**

***(a)* to see or hear domestic violence; - (overhearing threats of physical abuse; seeing or hearing an assault; overhearing derogatory language etc); or**

***(b)* to experiences the effects of domestic violence - (experiencing financial difficulties as a result of economic abuse; comforting or providing assistance to a person who has been sexually or physically abused; observing injuries of a person who has been physically abused; being present at a domestic violence incident attended by SAPS etc).** [↑](#footnote-ref-4)
5. In terms of the Act, all conduct that amounts to domestic violence, are qualified by the requirements in the last sentence of the definition (namely "harm"). It was previously suggested that "harm" should form part of the definition of "domestic violence" in relation to, among others, the following conduct: emotional, verbal or psychological abuse - paragraph *(c)*; harassment - paragraph *(f)* (included); spiritual abuse - paragraph *(g)*; coercive behaviour - paragraph *(hB)*; and controlling behaviour - paragraph *(hC)*. This will narrow down the wide ambit of their application and possible unintended consequences. **The alternative is to qualify all conduct that amounts to domestic violence – see the proposed wording under option 3.** [↑](#footnote-ref-5)
6. The definition of "complainant" in section 1 of the DVA, includes any child in the care of the complainant. [↑](#footnote-ref-6)
7. The definition of "complainant" in section 1 of the DVA, includes any child in the care of the complainant. [↑](#footnote-ref-7)
8. ~~The definition is not necessary in light of the definition of functionary, which allows the Minister to designate a functionary for purposes of the proposed section 2A, by notice in the~~ *~~Gazette.~~* [↑](#footnote-ref-8)
9. **Section 30(2) of the Older Persons Act (OPA), provides that "Any conduct or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress or is likely to cause harm or distress to an older person constitutes abuse of an older person". Section 30(3) then provides that for the purposes of subsection (2), 'abuse' includes physical, sexual, psychological and economic abuse and then define these expressions differently to the proposed definitions in this Bill. The question is whether elder abuse must be retained in the DVA taking into account: An elder person is in a similar position as other complainants in DVA matters. The conduct that constitutes domestic violence already covers the conduct contemplated in section 30(3). The "conduct or the lack of appropriate action" that causes" harm or distress" is extremely vague. Option 2 mitigates this aspect to an extend since it requires a "any relationship where there is an expectation of trust". The conduct in the OPA which is subject to specific remedies in terms of that Act (see sections 30(1) (offence), 29(10)*(b)*and (11) and 33*(b)*), is now also subject to other remedies ito the DVA.**  [↑](#footnote-ref-9)
10. **Option 1: ECT defined as: 'electronic communications' means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct, but does not include content service. The ECTA defines "electronic communication' a communication by means of data messages/ 'data message' as data generated, sent, received or stored by electronic means and includes-**

**(a) voice, where the voice is used in an automated transaction; and**

**(b) a stored record/ 'data' as electronic representations of information in any form.**  [↑](#footnote-ref-10)
11. **Option 2: Is an adopted definition of an 'electronic communication', that incorporates that provides for all the necessary elements in relation to an electronic communication iro Option 2 of the definition of harassment 'harassment'.** [↑](#footnote-ref-11)
12. **This is the definition that is used in the Protection from Harassment Act.** [↑](#footnote-ref-12)
13. **This is the Cybercrimes Bill definition (section 21(8)) – in technical terms it indicates where the communication originated (the sender of an e-mail or person who makes a cell phone to communicate) and the destination of the electronic communication (the receiving e-mail address or cellular number which was called). Other aspects that may be obtained are the date, time, duration, underlying service used, equipment identifiers such as the IMEI-number/MAC address etc; path of the communications (such as place where communication device connected to an EC network, what EC networks were further used to transmit communication to its intended destination etc.) – This stems from the retention obligations imposed on EC providers by the RICA iro call-related information.** [↑](#footnote-ref-13)
14. **Private electronic communications networks (and local area networks) may be used to commit domestic violence in the form of harassment. Section 6(2), read with the definition of 'private electronic communications network' in section 1of the ECA provides for licensing exemptions, presumable both iro electronic communications network services and electronic communications services licenses. The Cyber Bill specifically include a "*(b)* a person who has lawful authority to control the operation or use of a private electronic communications network used primarily for providing electronic communications services for the owner’s own use and which is exempted from being licensed in terms of the Electronic Communications Act, 2005", as an electronic communications service provider – this may also be considered for purposes of the Bill.**  [↑](#footnote-ref-14)
15. **"7(4) The court may order the respondent to pay emergency monetary relief having regard to the financial needs and resources of the complainant and the respondent, and such order has the effect of a civil judgment of a magistrate's court."** [↑](#footnote-ref-15)
16. **7(7) (b) If the court is of the opinion that any provision of a protection order deals with a matter that should, in the interests of justice, be dealt with further in terms of any other relevant law, including the Maintenance Act, 1998, the court must order that such a provision shall be in force for such limited period as the court determines, in order to afford the party concerned the opportunity to seek appropriate relief in terms of such law.** [↑](#footnote-ref-16)
17. **If the definition of 'domestic violence' is amended to all the conduct subject to harm the proposed insertion may be omitted.** [↑](#footnote-ref-17)
18. **This is part of intimidation and can be omitted.** [↑](#footnote-ref-18)
19. **'medical practitioner' means a person registered as a medical practitioner in terms of the Health Professions Act, 1974 (Act 56 of 1974);**  [↑](#footnote-ref-19)
20. **Health service provider , unless defined may include a pharmacy, hospital, the profession of ayurveda, Chinese medicine and acupuncture, chiropractic, homeopathy, naturopathy, therapeutic massage therapy or therapeutic reflexology, or any other profession contemplated in section 16 of the Allied Health Professions Act, 1982 (Act No. 63 of 1982). The expression should be substituted with:**

**'health care personnel' means health care personnel as defined in section 1 of the National Health Act, 2003 (Act No. 16 of 2003), who falls within the any category or class of health care personnel designated by the Director-General: Health in terms of a directive contemplated in section 18B, as a functionary;** [↑](#footnote-ref-20)
21. **'social worker' means a person registered as a social worker in terms of section 17 of the Social Service Professions Act, 1978 (Act 110 of 1978);** [↑](#footnote-ref-21)
22. **'official in the employ of a public health establishment' means—**

***(a)* a person belonging to any category or class of persons designated by the Director-General: Health in terms of a directive contemplated in section 18B; and**

***(b)* who is in the employ of a public health establishment as defined in section 1 of the National Health Act, 2003 (Act No.61 of 2003);** [↑](#footnote-ref-22)
23. **See definition of "educator".** [↑](#footnote-ref-23)
24. **'care giver' means any person older than 18 years who, in relation to a child, a person with a disability or an older person, takes responsibility for meeting the daily needs of or is in substantial contact with such person;** [↑](#footnote-ref-24)
25. **A definition of "communication" is proposed to distinguish it from "electronic communications". The definition proposed is as follows: 'communication' referred to in the definition of 'harassment' means anything that is used to impart information or ideas, and includes a letter, text, photo, video recording, audio recordings but excludes an electronic communication;** [↑](#footnote-ref-25)
26. **The definition is identical to the definition of "harm" in the Protection from Harassment Act, and relates to harassment in that Act. In the various conducts that amounts to domestic violence, any reference to "harm" must be interpreted as either "mental, psychological, physical or economic harm", which is not always reconcilable with all the definitions of the conduct that constitutes domestic violence, for instance "economic abuse" may give rise to physical harm. See also "intimidation", below. Harm is, not part of all the definitions of the conduct that amounts to domestic violence as contemplated in the Bill. A problematic aspect of this definition relates to section 8(4)*(b)*, which provides for arrest by a peace officer where are reasonable grounds to suspect that the complainant is suffering or may suffer "harm" as a result of the alleged breach of the protection order. It is submitted that a peace officer is in most instances not in a position to determine mental or physical harm and this may lead to a discretionary enforcement of the powers to arrest. Also see section (5)(2), where harm is considered as a prerequisite for the issuing of an interim protection order. It is submitted that the ordinary meaning of "harm" is preferable in the context of domestic violence.** [↑](#footnote-ref-26)
27. **The proposed section 6A provides for the establishment of integrated electronic repository for domestic violence protection orders (see clause 10). This expression is used throughout the proposed amended provisions to the DVA and a definition will facilitate interpretation.** [↑](#footnote-ref-27)
28. Intimidation has a legal technical meaning, namely to frighten in order to compel something else. Intimidation as provided for in section 1(1)*(b)* of the Intimidation Act, 1982 (Act 72 of 1982), was declared unconstitutional in Moyo and Others v Minister of Police and Others Case CCT 174/18 due to the vagueness of the offence. **The court however confirmed the fact that such an offence is necessary and amending legislation must address the conduct in question. Intimidation in the DVA does not amount to criminal conduct as contemplated in the Intimidation Act.** [↑](#footnote-ref-28)
29. **The definition is applicable to paragraph *(f)* of the definition of domestic relationship "they are persons in a close relationship that share or [recently] shared the same residence" and the definition of a related person and aims to further clarify those definitions.**  [↑](#footnote-ref-29)
30. **Can also just refer to a "drug" as defined in section 1(1) of Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), where "drug" is defined as 'drug' any dependence-producing substance, any dangerous dependence-producing substance or any undesirable dependence-producing substance;** [↑](#footnote-ref-30)
31. **There is a trend, which is also recognised in foreign jurisdictions, where third parties are used by a respondent to commit an act of domestic violence. A proposed definitions: 'co-respondent' means a person who —**

**(a) is not or has not been in a domestic relationship with a complainant;**

**(b) conspired with, or was procured by, the respondent to committed an act of domestic violence against the complainant; and**

**(c) committed or allegedly committed or aided or allegedly aided the respondent in the commission of an act of domestic violence against the complainant.**

**Section 7(1)(a) of the DVA provides that the court may, by means of a protection order prohibit the respondent to enlisting the help of another person to commit domestic violence. The Protection from Harassment Act or other applicable legislation must then be used to deal with third parties, since the DVA is only applicable in a domestic relationship. Surely, in such circumstances it will be more appropriate to deal with applications in terms of the POHA and the DVA simultaneously or to extend the operation of the DVA to co-respondents. Also see clause 4: Arrest without warrant of persons (other than the respondent) who commit acts of domestic violence.** [↑](#footnote-ref-31)
32. **Option 2 proposed by the Hon. Swart, who made the following comment in respect of option 1: "The present wording in the Bill (as amended) is too wide, and would, in my view, breach the constitutional rights to freedom of expression (set out in section 16), as well as the right to freedom of religion, belief and opinion, (set out in section 15)".**

 **Section 15(1) of the 1996 Constitution guarantees freedom of conscience, religion, thought, belief and opinion. In Prince v President of the Law Society of the Cape and others (CCT 36/00) it was decided that the Drugs Act infringe upon the freedom of religion of Rastafarians, but the prohibitions against cannabis is justified since it protects others against the harms associated with cannabis; and in Freedom of Religion South Africa v Minister of DOJ (Case CCT 320/17), where the defense of moderate and reasonable chastisement by parents was under consideration, it was decided that the right to free from all forms of violence (12(1)(c))/ human dignity (10), trumps the right of freedom of religion**. [↑](#footnote-ref-32)
33. **What about a substance, such as concentrated sulfuric acid, or date rape medication, or harmful content (such as a pornographic video of the complainant), or an interception device. Should this not be included in the Act for purposes of section 7(2), which provides that a court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant, including an order to seize any weapon. Deprivation of any property should be regulated by legislation and the court's powers are therefore restricted to the seizure of a weapon, only.**  [↑](#footnote-ref-33)
34. **The criminalizing of a failure to report has been criticized during the public consultation process. In terms of section 26(3) of the OPA, the failure to report a suspicion of abuse of an older person is an offence. Section 11(2) of the Mental Health Care Act, provides for a similar reporting obligation ito the exploitation, abuse and any degrading treatment of exploitation, abuse and any degrading treatment. Section 110(2) of the Children's Act, any person who on reasonable grounds believes that a child is in need of care and protection may report that belief to certain functionaries. It seems that only the OPA criminalises a failure to report. The effect of this criminalisation on health, counselling and other emotional and psychological support services that are offered and accepted on the basis that they are confidential and a mother of a child who fails to report domestic violence against her child, must be considered. It may further discourage assistance by other persons to a complainant, since the incident must be reported, for instance, if a friend or other family member is approached to provide advice or assistance after an incident of domestic violence he or she must report suspected domestic violence to the police. THIS MUST BE CAREFULLY CONSIDERED. Although the various conduct that constitutes domestic violence have been narrowed down in the various proposed options, some of the conduct incorporates a subjective element before domestic violence can said to be committed which is exuberated by the harm requirement (see for instance coercive behaviour; controlling behaviour; elder abuse; emotional, verbal or psychological abuse, sexual harassment and spiritual abuse etc). If it is decided that this provision must be retained it ought to be restricted, unless a report is made to such person by a complainant, to conduct that clearly constitute domestic violence, such as physical abuse (assault). A too wide application of this compulsory reporting may result in a system over-load. It is submitted that if the reporting mechanism is restricted to limb/life threatening conduct, it will ensure a more effective reporting and response mechanism to achieve the intended aim of the GBV-legislation, to curb violence against vulnerable persons.**  [↑](#footnote-ref-34)
35. Define " at the scene of an incident of domestic violence" – SAPS concern (what if person is not at the scene any longer) [↑](#footnote-ref-35)
36. **A person other than the respondent must be a co-perpetrator to domestic violence before the provision can apply by virtue of the fact that it must be an act of domestic violence which can only be committed by a respondent** [↑](#footnote-ref-36)
37. **'respondent' means any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against the complainant. It restricts the wide application of option 1 but result in a lacuna since third parties are excluded – they may however be arrested in terms of section 40(1) of the CPA, if the conduct amounts to a Schedule 1 offence, which include assault, malicious injury to property and other more serious offences – reasonably suspects.** [↑](#footnote-ref-37)
38. **The amendments in red substitutes the word "dwelling" wherever it appear to bring the provision in line with the DVA which uses the word "residence". Section 26 of the CPA uses the word "premises".** [↑](#footnote-ref-38)
39. **Define " electronic address". In addition to the electronic process to be established, it is submitted that facsimile and e-mail may also be used to lodge applications electronically.**  [↑](#footnote-ref-39)
40. **This is to ensure that certain organisations that promote children's rights can apply for protection orders. See among others, section 74 of the NZ Family Violence Act 2018. An approved organisation : Must apply to be appointed as an approved organisation; must be appointed as an approved organisation by notice in the Gazette; and must make an application to the court to make an application on behalf of a child under 16 years of age. The court must among others consider whether it is in the best interest of the child to appove an application by the organisation. If the proposal is approved appropriate amendments to the Bill will be drafted.**  [↑](#footnote-ref-40)
41. It is proposed that "immediately" be omitted, especially in light of electronic applications. The directives applicable to the clerks of the court in terms of the proposed section 18A, should regulate this aspect. If there is a need to regulate this, the following may be considered:

"(...) Where an application referred to in subparagraph (1)*(b)*(i)*(bb)*, is received—

(i) outside ordinary court hours or on a day which is not an ordinary court day, it must be submitted to the court on the first court day following the day upon which the application was received; or

(ii) during ordinary court hours on an ordinary court day, be submitted to the court on receipt thereof." [↑](#footnote-ref-41)
42. **Other aspects to addressed are: Clerk of court must inform complainant whether application was successful or not, electronic transmit domestic violence safety monitoring notice to applicant; particulars of monitoring member of SAPS must be provided to the complainant for verification purposes and hotline number for emergencies.** [↑](#footnote-ref-42)
43. **Evidence through intermediaries in proceedings other than criminal proceedings- CRMBILL** [↑](#footnote-ref-43)
44. **Evidence through audiovisual link in proceedings other than criminal proceedings - CRMBILL** [↑](#footnote-ref-44)