**COMMENTS AND RESPONSES ON THE DOMESTIC VIOLENCE AMENDMENT BILL TO SELECT COMMITTEE: 26 JULY 2021**

**1. General comments**

|  | **Comments** | **Responses** |
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| 1.1 | 1.1.1 **DEAR SA**(a) The amendment Bills to put an end to GBV are supported however this is still not enough. Police must be taught on how to apprehend the situation of GBV. (Calen Joshua Singh)(b) Abused women should be helped by qualified individuals and protected by the Domestic Violence Law from offenders. (Lenette Schoeman)(c) Support for the DVAB – The provisions strengthens the DVA. (Andries Booysen)(d) The amendments are not supported as the current legislation is not adequately enforced, nor is the evidence system currently in proper use which has caused a major backlog in evidence and cases. (Weyers Vorster)(e) Politicians muddling legislation which has good intent with definitions which are way too broad and vague. Tighten up how many of the issues/actions *etc.* are defined, keeping in mind the worst case of abuse on both sides of the coin. Better protection for woman and children is needed. Society should also move away from violence as a solution to everything including politicians threatening violence from public podiums. (Bernhard Enslin)(f) Some of these amendments are open to abuse where the person accused will have a great problem proving their innocence. In other respects it is a very good law if passed. (Ruby Badenhorst)(g) Get BEE out of the system so that we can get competent people in to do the job, with the right qualifications, and get rid of the ANC they don't know what they doing, there is no justice for the innocent tax payers, get a new Minister of Police that can enforce the law to protect the citizens of SA. (Veronica Marais)(h) These amendments are pointless if the police cannot fulfil their constitutional mandate as is. Get the basics working and GBV will reduce without extra measures that there is no capacity to enforce anyway.(Andrew Gillespie)1.1.2 **MOSAIC**It is reiterated the importance for this Bill to make provision for the clarification of all language that can lead to the use of individual discretion, opening up the opportunity for inconsistent implementation of the laws. In particular, the use of terms such as are highlighted:*- If reasonably possible;**- Reasonable grounds;**- Is of the opinion;**- Immediately.*These concepts must be clearly articulated in the relevant directives, regulations and national instructions attached to the Amendment Act.1.1.3 **Qina Mbokodo**(a) People on farms live in social isolation and access to health and social services is very difficult which means that women are often trapped in their homes with abusive partners with no help. Abusers also exploit the inability for women to call for help or escape since they are aware that the telecommunication in farming communities is poor, there is limited or no transport to access social services. (b) When women do get hold of the police, the response is generally slow with less to no support for them as the police are often reluctant to intervene in family matters. (c) The process of applying for a protection order is onerous, it takes the entire day which subsequently means loss of one day’s wages as employment on farms is based on a no work no pay basis. (d) Women who are illiterate and require assistance by the court officials when completing the application form do not receive that help. The humiliation and repeated abuse that these women are subjected to by the police, law and social services is among other things that disempowers them from seeking help, including possible arrests of a partner which will result in a loss of income for the household. The amendments are helpful.1.1.4 **Social Justice Coalition; Active Citizens Movement; Department of Community Health, WITS School of Public Health**It is recommended that pronouns in the draft Bill- ‘he/she and him/her’ be replaced with ‘their and or them’ to be inclusive of all persons regardless of their sexual orientation, gender and genderqueer identities.1.1.5 **Social Justice Coalition**It is submitted that the draft Bill must address and draw attention to systemic failures. Majority of the suggested clauses already exist and are implemented in other related pieces of legislation and national guidelines. It is proposed that th legislature should approach drafting Bills and regulations from a survivor-centered approach by ensuring that the following inter-sectionalities such as respect, choices, wishes, rights and dignity, safety, confidentiality and non-discrimination are highlighted.1.1.6 **ALT Advisory Research ICT Africa**(a) ALT Advisory implores the Committee to recognise the multiple and intersecting forms of discrimination that can intensify experiences of domestic and gender-based violence. Gender, gender identity, gender constructs, sexual orientation, race, and ability often intersect with other identities and expectations which can create distinct experiences of oppression or privilege.(b) The Bill predominantly relies on the binary terms, she, her, hers, and he, his, him. The Committee is encouraged to thread the theme of inclusivity throughout the Bill and rely on non-binary terms such as they and them in order to ensure that all persons are equally protected. It is therefore submitted that appropriate and inclusive terminology be “recognised and reflected in legislation and that wide protection is offered to the most vulnerable and marginalized”.(c) Significant internet-access discrepancies persist between rural or urban areas, between people of different sexes and gender, between poor or wealthier segments of society, between literate or illiterate people, and between children, adults, and the elderly. This manifest in two interrelated ways, being accessing physical infrastructure that enables access to online spaces, and the ability to access and disseminate content online which centres around a person’s digital literacy. The Committee is implored to be mindful of this in terms of the reporting of online domestic violence, using the online repository, and adjudicating matters that relate to online harms. (d) The proposed amendments do not go far enough in all respects in providing for digitalised environments. It is submitted that the definitions of certain conduct that falls under domestic violence should more clearly encompass abuse and violence facilitated by information communication technologies (“ICTs”). Over the past few years, the nature, harm and consequences of online forms of gender-based violence and abuse, including domestic violence and gender-based violence facilitated through ICTs and related datafication processes, have become increasingly clear. As these harms rise in frequency and prevalence, it is important that the law is responsive and ensures maximum protection to victims and survivors.  | (a) – (c) The Domestic Violence Amendment Bill seeks to include relevant functionaries and by way of Section 18B, provides for directives and instructions which will include training. (d) Some of the amendments of the DVA seek to ensure implementation and accountability with the relevant officials where implementation is found wanting.(e) While it is agreed that the law is often a blunt tool when used to fix societal ills, the making of directives by relevant Departments such as the DOH, DSD etc…ito clause 18B is aimed at providing clarity on what role-playing departments must do when dealing with domestic violence.(f) The law provides sufficient safeguards to protect against abuse of process. A final protection order will not be made without providing the respondent an opportunity to state their case. They may also be required to carry costs in terms of the existing section 15 if found to be vexatious, frivolous or unreasonable. All these processes are overseen by the courts.(g) Noted. Comments unrelated to the Bill(h) Noted.Noted.(a) Noted. The amendments seek to ensure that services are streamlined, accessible and officials held accountable. The Directives seek to ensure that the Act is implemented appropriately to ensure services to all victims.(b) The training of officials, coupled with the sanctions to be imposed by the instructions would resolve this concern. (c) Introducing a system for electronic applications is intended to lessen the burden on overstretched resources in the courts, and will make the process quicker. (d) Noted. Officials refusing to render the required assistance may face disciplinary proceedings, and this is intended to curb the challenges experienced in this regard.Although the parties to the application are referred to as “complainant” and “respondent”, the pronouns “he or she” are used. It is recommended that the collective pronoun “they” or “them” referring to non-binary or gender fluid persons be used. This reference to the third gender is inclusive of “he” or “she”.The amendments seek to address systemic failures by ensuring a clear pathway of services. This is further remedied by the requirement for the issuing of directives and instructions.(a) Noted. It is recognised that domestic and gender-based violence can take place through various forms of discrimination. (b) Noted, see comment above. (c) The Bill makes room for online application for a protection order, but this does not do away with the manual applications which are still permitted if online application cannot be used, is inaccessible or is not preferred. What is also intended by the Bill is to have facilities available for online applications at various strategic places such a police stations, shelters and other suitable places. There will be a drive to inform people how to apply for domestic violence protection orders online.(d) ICTs have been referred to where required in the Bill. The definition of “domestic violence” is broad enough to include abuse perpetrated online. This definition will be read together with the definition of 'disclose by means of an electronic communications service' to give protection against abuse perpetrated online, through an “electronic communication service” which is also defined. |
| 1.2 | 1.2 **ADDITIONAL****“category vulnerable persons”****Child Law Clinic**1.2.1 Amendments to the Domestic Violence Act should be read with those of the Sexual Offences Act in order to align the terminology used in both Acts and the categories of vulnerable persons that both Acts aim to protect.**Social Justice Coalition; LRC**1.2.2 It is submitted that a clause should be added in the Bill that addresses the onward sharing of a photo intended for one individual, as the more serious cases of revenge porn can have the effects of nonconsensual pornography which “include public shaming and humiliation, an inability to find new romantic partners, depression and anxiety, job loss or problems securing new employment, and offline harassment and stalking.”.**Active Citizens Movement**1.2.3 It is imperative that the definition and interpretation of 'consent' is inserted in clause 1 of the principal Act, which will be substantiated by analysis of its social context and how that correlates with legal implications.**Western Cape Government**1.2.4 Define all Acts that are referred to more than once.Social Justice Coalition1.2.5 We submit that it is important for the legislature to adopt a new approach that replaces the term ‘victim’ with ‘survivor’ recognizing the agency of women and other vulnerable persons who rely on the implementation and recommendations of pieces of legislation such as this one. The term victim reminds those who seek assistance of the stranglehold of the system. **Death of complainant****Western Cape Government**1.2.6 No specific provision is made regarding an order if a complainant dies. It is submitted that the order should not be removed from the repository as the order must still be taken into account e.g. if the respondent applies for a firearm license. It must specifically be stated that an order should not be removed from the repository if the complainant dies. **Western Cape Government**1.2.7 It is unclear why the provisions of sections 5, 6 and 10(3)*(b)*, and parts of section 20, of the Protection from Harassment Act have not also been included in the Amendment Bill. Include all the relevant provisions of the Protection from Harassment Act in the Amendment Bill.**Alternative measures for attendance in court****Western Cape Government**1.2.8 In some instances, the complainants move or are placed in shelters outside the jurisdiction of the court. It is sometimes difficult or even impossible for them to return to the court to finalise the order, especially when the victim is a partner of a gang member. The Department should consider empowering the Minister to, by regulation, prescribe alternative measures - for example, electronic communications, such as Skype or Zoom, from the nearest SAPS office, where identification can be confirmed, and where the complainant can participate safely.**Implementation****Western Cape Government**1.2.9 In order to implement the Act, consider adding a provision similar to that in section 41 of the Prevention and Combating of Trafficking in Persons Act (Coordination of responsibilities, functions and duties relating to implementation of Act). | 1.2.1 Noted.1.2.2 Noted, these issues have been catered for in the Cybercrimes Act, 2020. 1.2.3 The DVA provides for a civil remedy. The proposal mirrors the interpretation section in the Sexual Offences Act in respect of consent in the context where ‘non-consent’ is an element of a number of crimes listed in the Act. As the DVA is not a criminal remedy, the dictionary understanding of ‘consent’ will apply.1.2.4 Noted. Amendments will be effected where required. 1.2.5 The Act makes reference to “victim” only in the preamble and nowhere else is that word referred to that would require replacement with the word “survivor”. The word complainant is used in the Act and the Bill. To use the word “survivor” would exclude those who did not survive acts of domestic violence, as some victims are killed.1.2.6 The amendments do not provide for the removal of the orders granted by a court, irrespective of the circumstances. Section 5C specifically requires the presiding officer to ascertain if previous orders have been issued in favour of either of the parties. This would include orders granted in favour of deceased complainants.1.2.7 Sections 5 and 6 of the PHA relate to situations where the harasser is unknown to the complainant. The definition of respondent relates to someone the complainant is in a domestic relationship with. These sections are therefore not applicable. With regard to section 10(3)*(b)* of the PHA the complainant will be advised in terms of section 3(3)*(b)*(iii); 4(2)*(b)* and 7(2)*(b)* of the option of laying a criminal complainant.1.2.8 Physical attendance is not prescribed in the DVA. While the benefit of remote access may be evident, it would be appropriate to regulate the use of remote access to court proceedings in this Act. this issue is receiving attention. 1.2.9 Section 18B seeks to provide for multi-sectoral coordination in the creation of directives and instructions, which in turn provides for the responsibilities, functions and duties ascribed in terms of the Act. |
| 1.2 | **COSATU**(a) There is a need to ensure that violence in the world of work, and the effects of domestic violence on the world of work are addressed.(b) Legislative change on its own is not enough, since there are systemic challenges in the court system and SAPS with the implementation of existing legislation. Additional responsibilities that the proposed amendments demand of the justice system will require adequate funding, support, extensive training and effective accountability mechanisms.(c) Legislation must be framed explicitly within a victim-centred and survivor-focused approach, and this approach must be stated upfront in the legislation to ensure that there is a common understanding guiding the implementation and coupled with training. Therefore, it is proposed that the Bill be prefaced with an explanation and elaboration of a victim-centred and survivor-focused approach and its objectives, and what this requires of implementers of this legislation.(d) The protective measures identified for a more victim-centred and survivor focused approach include the following:(i) making the process of providing testimony easier and less likely to produce secondary victimisation;(ii) consideration of victims’ safety in bail considerations;(iii) consideration of the impact on the victim in sentencing (including the provision for victim impact statements);(iv) greater transparency and information;(v) greater accountability to the public; and(vi) sensitising and training the judiciary and police about the diverse needs of victims.(f) It is recognised that some of these provisions are covered in the 3 Bills, but it is submitted that there is a need to place these issues at the centre and to ensure that there is proper monitoring and accountability in the implementation thereof, and that they are adequately budgeted.(g) Concerns regarding court processes that are insensitive to women and children, including prohibitions on the nature of questioning allowed when victims give testimony need to be addressed.(h) It is proposed that the state establishes clear procedures, including an ombudsman/appropriate independent body for victim complaints regarding the services rendered, enabling independent investigation of alleged transgressions.(i) The expanded obligations on the Departments to provide services to victims requires adequate budgeting and the expansion of capacity to effectively provide these services. Public awareness of these services is also crucial.(j) Police stations are grossly under-resourced and unable to meet legislative requirements. While the law requires that victim statements are taken in a private room, most police stations are completely under-resourced and unable to provide such. In fact, many police stations struggle with access to the most basic facilities such as vehicles. A further concern is that in rural areas, police stations and courts are very far and not easily accessible to victims of violence.(k) It is submitted that increasing caseloads in courts, resulting from improved reporting, as well as expanded legislation require additional resources and adequate staffing. (l) Several NGOs and CSOs providing shelters and psychosocial support to women in abusive relationships, as well as legal advice, representation and advocacy rely heavily on donor funding, which is inadequate, inconsistently available and unsustainable. It is critical that state funding is made available to these organisations, so that they can continue to play these roles and expand their reach to different parts of the country. Therefore, legislation must strengthen the commitment to budgetary allocations that respond to the institutional weaknesses in the response to GBV.(m) Legislation must provide for audits and recommendations on institutional implementation capacity, like an audit of police stations and courts regarding capacity to implement legislative requirements. (n) Public representatives must be held to account in cases where they are accused of gender-based violence, and this must apply to political parties and civil society organisations and leadership.(o) It is submitted that research conducted by the CGE indicates that the leadership in police stations is often not familiar with legislative requirements, and therefore unable to render the services in the manner envisaged in the law.(p) Domestic violence is reported under various categories of criminal offences. There should be obligatory annual reporting of the number of police cases of domestic violence against women by male intimate partners, and against children, and the number of protection orders applied for and finalised. This would assist with enforcement, monitoring and information management. | (a) Section 7(1)*(f)* of the Act gives the court the power to prohibit the respondent from entering the complainant’s workplace and section 7 in general empowers the court to prohibit any acts of domestic violence from being carried out at any place including work place.(b) Noted. Training has been identified as a key element in the making of directives. (c) The Act as it currently stands is prefaced with an explicit intent to provide for the issuing of protection orders against domestic violence. The overarching policy framework is explicitly victim-centred and survivor focused. The amendments seek to give effect to this approach and will be concretised in training on the directives to be issued in terms of the Bill. (d) The proposal is noted and the Act and Bill has the following provisions:(i) court can prohibit the respondent acting in person from directly questioning the complainant or any witness but through an intermediary. The giving of evidence through audio-visual link is being proposed by the Criminal and Related Matters Amendment Bill; (ii) every criminal court considers the safety of the victims or potential victims during bail hearings and can therefore set a condition that the respondent should not contact the victim or potential victim or witnesses; (iii) victims can be called to given evidence during the sentencing stage of criminal proceedings;(iv) all courts endeavor to be transparent in conducting their processes and in providing necessary information to victims;(v) no sufficient detail is given regarding this proposal, however, court documents and information on certain proceedings are accessible to the public;(vi) the regulations and directives are intended to provide for training of personnel. (f) The issues are covered by the Bill, and each Department will cater for the budgetary aspects they are responsible for.(g) The Act currently prohibits the direct questioning of witnesses by the respondent who is unrepresented. (h) Clause 18B(2)*(e)* requires the directives to provide for institutions where complaints may be lodged against the functionary, members of SAPS or peace officers.(i) The budgets of the Departments must accommodate the new requirements and capacity needs. Clause 18B(2)*(e)* of the Bill requires the directives to provide for a public education and communication initiative to be undertaken.(j) The budget of the Departments must accommodate the new requirements and capacity needs. The regulations or directives must provide for places where victims may access online portal to apply for a protection order. (k) The budget of the Departments must accommodate the new requirements and capacity needs.(l) Noted. The Bill cannot provide for budgetary allocations for identified services. (m) Noted. Accounting Officers of the relevant institutions are required to maintain information of resources available and to cater for the implementation of new legislation which are identified as critical, such as the 3 GBV Bills which are intended to aid the fight against gender-based violence.(n) The Act as it currently stands, and the amendments thereto, apply equally and similarly to everyone in the country, whether they are politicians, public servants or private individuals. (o) The concern relates to the issue of training which is a matter to be dealt with by the National Instructions of the police.(p) The importance of information management is noted. The Domestic Violence Act is a civil instrument and does not criminalise actions other than non-compliance with the Act. Certain acts of domestic violence are crimes in their own standing. However, a programme is under way (for the purposes of the National Strategic Plan) to define certain forms of gender-based violence to facilitate the proper identification, capturing and recording of gender-based violence related incidents. |
| 1.3 | **Just Detention International - South Africa**(a) It is submitted that this, and all other Bills, should have gender neutral and gender inclusive language, and should move away from applying pronouns that reinforce the transphobic gender and sex binaries such as "he or she" and instead use "he or she or them", or another formulation that is gender inclusive. (b) Trans and gender non-conforming people are extremely vulnerable to discrimination as well as physical, emotional, and sexual abuse, despite the protections and rights provided through our constitution. With the unrelenting violence perpetrated against the LGBTIQ+ community, including those behind bars who are especially vulnerable to sexual abuse, it is essential that legislation seeking to address gender-based violence is inclusive of gender non-conforming and transgender people in its language.  | (a) and (b) Noted, see comment above.  |
| 1.4 | **Ms Karabo Prudence Kokwane**It is submitted that the respondent or the perpetrator be engaged to a relevant professional (social worker or psychologist) for assessment so as to render interventions aiming at improving and modifying the behavior. | The court has wide powers under section 7 to make this order and can do so in relevant circumstances. It is not necessary (and may possibly lead to unintended consequences) to provide for this to be done in all cases as it may overburden the services provided by social workers.  |
| 1.5 | **Stellenbosch Law Trust Chair in Justice**It is suggested that it may be a good idea for the Bill to include a requirement for the collection of data from all found guilty of GBV with a view to using such data to elicit factors behind GBV, help develop early warning mechanisms and feed into efforts aimed at prevention. | A programme is under way (for the purposes of the National Strategic Plan) to define certain forms of gender-based violence to facilitate the proper identification, capturing and recording of gender-based violence related incidents. |

**2. Clause 2 – Section 1: Definitions**

|  | **Comments** | **Responses** |
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| 2.1 | 2.1 **Definition of “capture”**Western Cape GovernmentThe reference to “prescribed in terms of section 6A” is incorrect as section 6A deals with directives, not regulations (and the definition of “prescribe” specifically refers to regulations made under section 19). | The submission is accepted and the definition may have to be amended by deleting the expression “in terms of section 6A”. Section 6A(3) refers to “issue directives to *prescribe*”. It is suggested that the words “prescribe” be substituted with the words “provide for”.  |
| 2.2 | 2.2 **Definition of “care giver”**Centre for Child LawA ‘care giver’ is defined in the proposed Bill as: “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 in substantial contact with, such a person”. The terms ‘care giver’ and ‘care’ are defined in both the Older Persons Act 13 of 2006 and the Children’s Act 38 of 2005. The definitions differ and may result in ambiguity. To avoid such ambiguity and to ensure that the definition of a caregiver is used in the appropriate context when dealing with older persons and children, the provision in its current form ought to be amended.**Recommendation**: The provision should read as follows:A “caregiver means any person who provides care-(a) in relation to a child as contemplated in section 1 of the Children’s Act 28 of 2005;(b) in relation to an older person as contemplated in section 1 of the Older Persons Act; or(c) in relation to a person with a disability, takes responsibility for meeting the daily needs of, or is in substantial contact with such a person. | The definition of ‘care giver’ is relevant only in respect of the definition of ‘functionary’. There is a difference between the concept of care giving as contemplated in the Children’s Act and that envisaged by a functionary. For consistency the space between the word ‘care’ and ‘giver’ will be removed in the definition of ‘functionary’.  |
| 2.3 | 2.3 **Definition of *‘coercive behaviour’*:**2.3.1 Werksmans Attorneys(a) It is submitted that the content or wording of the proposed definition does not provide sufficient clarity about what the legislature intends coercive behaviour to entail. This renders the definition vague and/or overbroad and therefore constitutionally non-compliant.(b) The definition omits necessary aspects such as the degree of repetition (if any) that is required to establish that behavior of this nature has occurred; the complainant's lack of will; and the effect of the behaviour on the complainant.(c) It is submitted that in the context of domestic relationships, coercion "does not involve physical contact" but can translate into a perpetual state of fear and disempowerment which neutralises the victim to a point where the victim "can only make decisions in a structure controlled by the perpetrator", thereby keeping them on "an invisible leash"(d) The following definition is proposed–"'Coercive behaviour' means repeated and unreasonable conduct by the respondent that—(a) compels or forces a complainant to act or refrain from acting in accordance with their own will; and(b) has a serious effect on the complainant, including—(i) infringing the complainant's rights to self-determination or dignity;(ii) causing the complainant serious alarm or distress that has a substantialadverse impact on their everyday behaviour or usual daily activities; or(iii) causing the complainant to fear that violence will be used against them;"2.3.1 ALT Advisory Research ICT AfricaCoercive behaviour can be conducted online, and therefore it is proposed that ‘coercive behaviour’ be defined to mean: “to compel, force, or **covertly force** a complainant to abstain from doing anything that **they** have a lawful right to do, or to do anything that **they** have a lawful right to abstain from doing, **including by means of electronic communications, or in respect of electronic communications.**”. | (a) The proposed definition of ‘coercive behaviour’ is justifiably broad in that it is not restricted to specific behaviour, but focusses on the coercion of complainant to do or not to do something. The Department is of the view that this should be left to the courts to interpret based on the evidence that may be placed before it on a case by case basis.(b) Noted. The submission is not supported. A single act is intended to be sufficient for the complainant to obtain protection under this ground.. (c) As the definition does not stipulate which types of coercion is contemplated in the Bill, all types of coercion are covered no matter what form they take. (d) The proposed definition is not supported. Paragraph *(a)* is already covered in the current definition. The insertion of an additional element of “serious effect on the complainant” is unnecessary and burdensome and may result in a complainant not receiving the necessary relief.Submission not supported. The force contemplated in the definition may be direct or indirect, secret or open and need not be specified as suggested. The definition also covers instances where coercion is perpetrated by way of electronic means, or physically. The manner of coercion needs not be specified.  |
| 2.4 | 2.4 **Definition of “communication”**Active Citizens MovementCommunication referred to in the definition of 'harassment', should extend to include electronic communications. The definition of electronic communications is accepted, since it serves as a platform of cyber-bullying. Cyber-bullying refers to the use of electronic communication, in an intimidating or threatening nature, to harass someone. This includes invasion, infringement or interference with a person's rights of privacy/publicity, which consists of being portrayed in a false light, unauthorised public disclosure of private information or intrusion. **Recommendation** : ‘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 and electronic communication. | The definition of ‘harassment’ includes ‘communication’ and ‘electronic communications’ both of which are defined. The proposal is not supported.  |
| 2.5 | 2.5 **Definition of “complainant”**Western Cape GovernmentThe definition includes a child in the care of a complainant, but does not refer to a person with disabilities or an older person in the care of a complainant. The wording is also not aligned to that of the definition of “care giver”. Replace “any child in the care of a complainant” with “any person in respect of whom the complainant is a care giver”. | The inclusion of a child in the definition of ‘complainant’ is aimed at establishing that a child within the domestic relationship may bring an application in their own right irrespective of age. The use of the word “care” and “care giver” should not be conflated as they are not synonymous.  Section 2A places an obligation on functionaries to report domestic violence in respect of children, persons with disabilities and older persons.  A functionary is defined as including a ‘care giver’ which is in turn defined as an adult who has the responsibility of meeting the daily needs of, or having substantial contact with a child, person with a disability or an older person.  The functionary is not the complainant.    |
| 2.6 | 2.6 **Definition of *‘controlling behaviour’*:**2.6.1 FOR SA(a) The definition is problematic since it includes the expression “*regulating his or her everyday behaviour*”, when in many domestic relationships it is common for example, for parents to regulate the behaviour of their children, or an employer (whose domestic worker or other employee lives on the same premises) to do so with his/her employees. This is not necessarily controlling behaviour in the sense contemplated by the Bill. It is proposed that the expression *“regulating his or her everyday behavior”* be deleted.2.6.2 ALT Advisory Research ICT AfricaIt is proposed that “controlling behavior” be defined to mean behaviour towards a complainant that is aimed at making the complainant dependent on, or subservient to, the respondent and includes-*(a)* isolating themfrom sources of support; *(b)* exploiting theirresources or capacities for personal gain; *(c)* depriving themof the means needed for independence, resistance or escape;*(d)* regulating theireveryday behaviour**;** *(e)* controlling, altering, or manipulating their electronic devices without their consent, including switching on and off of devices, either in the presence of the person or remotely, or the locking and unlocking of physical spaces; *(f)* limiting or restricting access to their electronic devices, or restricting access to online spaces or services; or *(g)* forcefully gaining access to or performing actions on the complainant’s electronic devices without their consent.”.2.6.3 Stellenbosch Law Trust Chair in JusticeThe aim of the definition of “controlling behaviour” is limited to “making the complainant dependent on or subservient to the respondent.”. This should be broadened to also include intimidation as an aim. This definition places too much of a burden on the complainant to prove the very specific aim of the respondent.2.6.4 Werksmans Attorneys(a) It is proposed that the word "behaviour" as it appears in the definition be replaced with the word "conduct" as "conduct" is a broader and more inclusive term than "behaviour".(b) It is further submitted that the inclusion of the word "aimed" is problematic as it incorrectly places a disproportionate focus on a respondent's intention in the context of this behaviour. Therefore, the following definition is proposed:"**'controlling behaviour'** means **conduct** towards a complainant that **has the effect of** making the complainant dependent on, or subservient to, the respondent**,** and includes—". | (a) The expression “*regulating his or her everyday behaviour*” in paragraph *(d)* of the definition is necessary to cover instances that are not covered in paragraphs *(a), (b)* and *(c)*. Controlling the everyday behaviour of the child is legally permitted, as long as it does not constitute the abuse of the child. The controlling behaviour contemplated in the Bill is that which amounts to the abuse, humiliation or degrading treatment. The employee is not covered under this definition unless the employer and employee are in a ‘domestic relationship’, as defined.The use of the third gender is addressed above. The proposed paragraphs *(e)*, *(f)* and *(g)* are not supported as they seem to be covered by paragraph *(b)*, i.e. exploiting his or herresources or capacities for personal gain. Furthermore, these are acts that the complainant can request the court to order the respondent to refrain from doing. The acts listed in paragraph *(a)* to *(d)* are not intended to be a closed list, but an indication of the acts intended to be covered by the provision. The words “dependent on” or “subservient to” indicate an element of control. There are many more acts that can be listed, but it is not necessary to broaden the provision to that extent, especially when such acts may be covered under other provisions of the Act or Bill, or may be prohibited in terms of the general powers of the court. The element of intimidation is not necessary, as to control the complainant can take place without intimidation. The aim of the respondent need not necessarily be proven, as long as the complainant can show that the respondent is exerting control over him or her should be sufficient.(a) The proposal is not supported as these words are synonymous, and “behaviour” is preferable as it links to the word that is being defined.(b) The proposal is supported as it takes away the possibility of the complainant being required to show the aim of the respondent, which may be difficult to do.  |
| 2.7 | 2.7 **Definition of “corporal punishment”**2.7.1 Sonke Gender JusticeSonke reiterates the importance of expanding the definition of “domestic violence” to include “corporal punishment” in line with the definition of the United Nations Committee on the Rights of the Child’s General Comment No. 8. This is defined as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.”.2.7.2 MOSAICIt is proposed the amendment of section 1*(b)* to include a definition of “corporal punishment” as follows:“‘corporal punishment’ means any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light;”. Amend section 1*(i)* of the Bill to include “corporal punishment” in the definition of domestic violence, as follows:“(g) the substitution for the definition of “domestic violence” of the following definition:“'domestic violence' means -(a) physical abuse;(b) sexual abuse;(c) emotional, verbal orpsychological abuse;(cA) all forms of corporalpunishment;(d) economic abuse; …”. | Corporal punishment in its various forms is already catered for under the range of behaviours listed under ‘domestic violence’. The proposal is not supported.Proposal not supported, as above. |
| 2.8 | 2.8 **Definition of *‘damage to property’*:**2.8.1 Stellenbosch Law Trust Chair in JusticeClarity on the meaning of interest in the definition of “damage to property” when referring to the disposal of household effects or other property is needed. The requirement of establishing an interest on the part of a complainant places an evidentiary burden on her to show that she has an interest in the property. | The word “interest” carries its ordinary meaning and the provision requires that the property in question should be of some importance to the complainant. The complainant cannot rely on this provision in relation to any property that he or she has no relation to. |
| 2.9 | 2.9 **Definition of *‘disability’*:**Stellenbosch Law Trust Chair in JusticeThe use of the word impairment in the definition of “disability” is too broad in scope and creates legal uncertainty.  | The Department disagrees that the definition is unclear. The ordinary meaning of impairment is well established. |
| 2.10 | 2.10 **Definition of “Domestic relationship”**2.10.1 Centre for Child LawThe Children’s Act contemplates that parental rights and responsibilities must be exercised by the parents and/or guardians. Section 32 of the Children’s Act additionally envisages a situation where a person voluntarily takes care of a child without natural or assigned parental responsibilities and rights in relation to that child. The Children’s Act imposes upon a care-giver, the responsibility to ensure that a child in his/her care is protected from maltreatment, abuse, harm and hazard. Alignment of the definition of a ‘domestic relationship’ with section 32 of the Children’s Act is proposed. It is also recommended that the provision be revised to recognise multiple types of informal care arrangements as acknowledged by the Children’s Act. Amend this part of the definition to read:“(c ) they are those who hold parental responsibilities and rights as contemplated in section 18 of the Children’s Act, or caregivers as contemplated in section 32 of the Children’s Act 38 of 2005”.2.10.2 Active Citizens Movement (a) The definition of domestic relationship should be extended to include any arrangement between a complainant and a respondent (irrespective of sex and gender) whereby they ordinarily share or shared a residence together for any given period, with no particular close relationship. Those who live under this arrangement may encounter domestic violence under the same conditions and of equal severity as those who share a close relationship, hence they deserve equal protection regardless of their relationship status with the respondent. (b) Extending the definition of a domestic relationship to include individuals with shared residency will allow for them to seek the necessary protection under the principal Act. | It is believed that the current formulation is wide enough to cover all manner of care arrangements between parental figures and children. The definition of care giver as it relates to a ‘functionary’ in this Bill would create confusion if the concept of ‘care giver’ as provided in the Children’s Act is incorporated.(a) The proposal would unnecessarily extend the scope of the Act to those who are not in a relationship contemplated in the Act. This would include students who share the accommodation at student residence even when they are unrelated in any way. The complainants contemplated by the submission can resort to protection provided by the PHA. (b) The primary reach of this Act is for those in some form of relationship within a domestic setting. The use of the word ‘close relationship’ is to exclude the relationships referred to in this submission. An exclusionary clause is not deemed necessary. The proposal is not supported. |
| 2.11 | 2.11 **Definition of *‘domestic violence’*:**2.11.1 SONKE Gender Justice Sonke reiterates the importance of expanding the definition of “domestic violence” to include “corporal punishment” in line with definition of the United Nations Committee on the Rights of the Child’s General Comment No. 8. This is defined as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.”.2.11.2 Western Cape GovernmentConsider expanding the definition of “domestic violence” in relation to a child to include “neglect”. | Corporal punishment is incorporated in the definition of "physical abuse". The proposal is not supported. Child neglect is serious which, in terms of section 47(2) of the Children’s Act, requires a court in any matrimonial related proceedings to suspend the proceedings for an investigation as to whether the child is a child in need of care and obliges the court to request the Director of Public Prosecution to attend to allegations of neglect. To include neglect as an act of domestic violence would be slap on the wrist of the perpetrator.  |
| 2.12 | 2. 12 **Definition of *‘economic abuse’***:2. 12.1 Women’s Legal CentreA concern is raised regarding the legal meaning of *“an interest”* in relation to the disposal of household effects or other property. The requirement of establishing ‘in interest’ on the part of complainant places an evidentiary burden toshow that the complainant has an interest in the said property. It must be sufficient for her to merely state that the complainant has an interest in the household effects or other property to shift the evidentiary burden onto the respondent to show that the complainant does not have ‘an interest’. 2.12.2 ALT Advisory Research ICT AfricaEconomic and financial abuse can manifest in an online context or may impact the ability of a person to access and use ICTs and electronic communications. Without access to electronic communications, a victim or survivor may be unable to report the violence, communicate with their support structures, and access information. Examples of this type of economic abuse include depriving a victim or survivor of a mobile device or limiting access to data, Wi-Fi, or airtime. Therefore, the following amendment is recommended to the definition of “economic abuse”: *(a)* the **[unreasonable]** deprivation of economic or financial resources to which a complainant is entitled under law or which the complainant requires out of necessity, including education expenses, household necessities for the complainant, access to and the use of electronic communications, airtime, Wi-Fi and mobile data and mortgage bond repayments or payment of rent in respect of the shared residence or accommodation;”. | Where a complainant is alleging economic abuse she would need to make a case in this instance of the interest she has in particular effects or property. For example the fact that she is married in community of property would provide evidence of her interest in any shared property. If there is no need to show or allege an interest a complainant would be able to allege deprivation and possibly obtain a protection order without showing that she has a right to said property. This may lead to abuse of this process.The proposal is covered by the expression “the deprivation of economic or financial resources to which a complainant is entitled under law or *which the complainant requires out of necessity*,…”. It is not necessary to specify the proposed insertion.  |
| 2.13 | 2.13 **Definition of “elder abuse”**2.13.1 Social Justice CoalitionIt is recommended that the definition of “elder abuse” be clarified to include and read as follows “persons defined as elders as contemplated in the Older Persons Act 13 of 2006.”.2.13.2 Western Cape GovernmentThe definition does not also refer to section 30(3) of the Older Persons Act. Add “read with section 30(3)”. | The proposal is not supported as the current definition aligns with the Older Persons Act. Section 30 of the Older Persons Act provide that: “(1) Any person who abuses an older person is guilty of an offence. (2) 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.(3) For the purposes of subsection (2), **'abuse'** includes physical, sexual, psychological and economic abuse and-   *(a)*   **'physical abuse'** means any act or threat of physical violence towards an older person;   *(b)*   **'sexual abuse'** means any conduct that violates the sexual integrity of an older person;   *(c)*   **'psychological abuse'** means any pattern of degrading or humiliating conduct towards an older person,…” The Bill contemplates the issuing of a protection order on the grounds of elder abuse in instances such as misusing the elder’s grant. However, if there is an abuse as contemplated in section 30, the Older Persons Act kicks in, which makes the abuse an offence. Therefore, it is not necessary to refer to section 30(3).  |
| 2.14 | 2.14 **Definition of *‘electronic communications’:***2.14.1 ALT Advisory Research ICT AfricaIt is proposed that the definition of electronic communications be amended to mean: “electronic representations of information in any form and includes without limitation voice, sound, data, text, video, animation, visual images, moving images and pictures,real, simulated, or manipulatedor a combination or part thereof, that is disclosed by means of an electronic communications service;”.2.14.2 Active Citizens MovementThere is a discrepancy in the definition of electronic communications as provided in the Bill and the Electronic Communications Act 2005. The definition provided in the Electronic Communications Act 2005 is expansive with regards to the type and medium of communication, whereas the Bill provides a narrow definition that restricts electronic communication to representations that are disclosed by means of an electronic communications service. The definition in the principal Act needs to be reconciled with the definition in the Electronic Communications Act 2005, which is elaborative of different forms of electronic communications and thus more suitable.**Recommendation**: ‘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, electro-magnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct, but does not include content service. | The proposal is supported and may be qualified to read: “… pictures that are real, simulated or manipulated,…”.The definition of electronic communications mirrors that of the Cybercrimes Act. Consideration has been given to the reach of the definition and it is considered sufficient. |
| 2.15 | 2.15 **Definition of “emergency monetary relief”**2.15.1 Sonke Gender JusticeIt is suggested that this be further changed to enable existing household expenses to be covered. This must not be limited, or open to what is deemed a necessity, but must instead consider all existing household expenses. Amend section 1(l) of the Bill to read: (d) household **[necessities]** expenses.2.15.2 Active Citizens MovementIt is proposed that **‘emergency monetary relief’** be amended to mean—(a) compensation for monetary losses suffered by a complainant, and financial support for the complainant and the child in their care, at the expense of a respondent, before or at the time of the issue of a protection order as a result of the domestic violence, including—…[(f)](vi) expenses in respect of psychosocial services and counseling;[(g)] (vii) transportation expenses;[(h)] (viii) clothing expenses;[(I)] (ix) expenses for acquiring sanitary products; and(b) maintenance of any child in the care of the complainant, pending finalisation of maintenance proceedings in terms of the Maintenance Act, 1998 (Act No. 99 of 1998).2.15.3 Western Cape Government(a) The list should be conjunctive as it could include any or all of the options. Proposed para (b) includes a reference to a child in the care of a complainant, but does not refer to a person with disabilities or an older person in the care of a complainant. Replace “or” with “and” at the end of proposed para (a)(v). (b) In the proposed paragraph (b), consider adding a reference to a person with disabilities and an older person in the care of a complainant, or, alternatively, any person in respect of whom the complainant is a care giver. This will be in line with the Maintenance Act – see section 2(1) of the Maintenance Act: “The provisions of this Act shall apply in respect of the legal duty of any person to maintain any other person, irrespective of the nature of the relationship between those persons giving rise to that duty”.2.15.4 Department of Community Health, WITS School of Public HealthThere is a concern that this list is not exhaustive. It is suggested that transportation costs be included in this list; and that the statement wording is such that it affirms that this list of costs is not exhaustive. | The suggestion is not supported as the Bill proposes to amend paragraph *(d)* to read: “***[(d)*]**(iv) expenses for acquiring household necessities;”.The suggestion is not supported as “financial support” will be covered by the amendment to paragraph *(d)* which will read: “***[(d)*]**(iv) expenses for acquiring household necessities;”. Furthermore, the provision is not a closed list and therefore the proposed insertions will be covered. The Maintenance Act must also be invoked in respect of those areas of financial support that is required by a complainant.This is already an open ended list by virtue of the use of the word ‘including’. Therefore the rewording is not supported.(a) and (b). The inclusion of maintenance for any person, which may include a person with a disability or an older person is supported and will require rewording of this subparagraph. As this is already an open ended list it is not necessary to expand the list. However, as transportation is a challenge particularly for the poor in remote areas, or a complainant without any resources to attend court or seek medical attention, it will be considered as an option to include it. |
| 2.16 | **Definition of *‘emotional, verbal or psychological abuse’:***2.16.1 Women’s Legal CentreThe use of the word **‘to’** in the context of causing emotional pain adds the legal element of intent on the part of the respondent. It is recommended that the section be redrafted to replace this element in the definition of emotional, verbal and psychological abuse:“*(b)* **[repeated]** threats **[to]** that cause emotional pain;”.2.16.2 ALT Advisory Research ICT Africa(a) It is proposed the division of paragraph *(f)* of the definition of emotional, verbal, or psychological abuse as follows:*“(f*A*)* to disclose or threaten to disclose a complainant’s gender, gender identitysexual identity, sexual orientation or perceived sexual orientation without the complainant’s consent; *(f*B*)* to disclose or threaten to disclose private information, or content of a sexual nature, concerning a complainant, to others without the complainant’s consent.”.(b) It is suggested that emphasis be placed on the importance of consent, as has been recognised elsewhere in the Bill. 2.16.3 Active Citizens MovementEven though the present definition includes threats of emotional and physical harm, it doesn't account for threats of economic abuse and its impact, therefore the definition should be expanded to include the last point listed below.**Recommendation** :‘emotional, verbal or psychological abuse’ means degrading, manipulating, threatening, offensive, intimidating or humiliating conduct towards a complainant that causes mental or psychological harm to a complainant, including—…(h) threats to commit suicide or self-harm; or(i) threats to economically abuse the complainant as a controlling mechanism to silence the complainant about the abuse experienced and prevent them from seeking help.2.16.4 Western Cape Government(a) The term “harm” is not defined, and as such, the introductory part of the definition should also include a reference to inducing fear, to ensure the definition is wide enough. Add “or induces fear” after “harm to a complainant” in the introductory part of the definition.(b) In the proposed paragraph (f) information should include photos and videos. Proposed para (f): consider adding a reference to photos and videos too. Paragraph (g) refers to “injury”, but “harm” would have wider application. Therefore, in the proposed paragraph (g) replace “injury” with “harm”.2.16.5 Department of Community Health, WITS School of Public HealthAddition of a definition for the term ‘harm.’ This could be defined as described in the amendment Bill B20B as “means any mental, psychological, physical or economic harm.”.2.16.6 Olerato MorekhureIt is proposed that the leaking of nudes or sexual videos of another person occurring in bullying space be added under domestic violence. | The comment is not supported as the word “to” is intended as a verb as in threatening to cause emotional pain. Instead, the proposed amendment by WLC adds an element that would require the complainant to show that the threats have caused emotional pain.(a) The proposal is not supported since the paragraph as it currently stands covers what the provision is intended, and particularly the *sexual orientation* of the complainant, which arguably covers sexual identity or perceived sexual orientation. It would not seem to be offensive to threaten to disclose the gender of the complainant, but it would be offensive to threaten to disclose the sexual orientation of the complainant.(b) The proposal is supported and an amendment will be drafted. The expression “without consent” will be incorporated in this clause.  The proposal is noted. The Act currently has the definition of “economic abuse” which is an act of domestic violence, and a threat of economic abuse and threats to cause emotional and physical harm are covered by paragraph *(j)* of the definition of domestic violence, which is considered sufficient to cover this concern.(a) The definition should be read together with the definition of ‘domestic violence’ and particularly the rider ‘where such conduct harms, or inspires the reasonable belief that harm may be caused to the complainant’. (b) It is submitted that ‘personal information’ in paragraph *(f)* goes wider than photos or videos and that to add this would restrict the definition. It is submitted that the word ‘harm’ is more appropriate than the word ‘injury’.As ‘harm’ is incorporated into the definition of ‘domestic violence’ and has its ordinary dictionary meaning applied to all aspects covered in this definition, this proposal is not supported.These are already covered under the definition of “emotional, verbal or psychological abuse”. |
| 2.17 | 2.17 **Definition of “expose a child to domestic violence”** 2.17.1 Centre for Child LawThe act of exposing a child to domestic violence should be a factual inquiry into whether the accused person behaved in a violent manner, and whether the child in question factually saw, heard or experienced the effects of domestic violence. The perpetrator’s intention is not important as the factual outcome was that of exposing the child to domestic violence. Consequently, the word “intentionally” ought to be removed from the definition.2.17.2 Western Cape Government Delete “intentionally”. | The deletion of the word ‘intentionally’ would mean that the complainant may also be guilty of exposing the child to domestic violence. For this reason this proposal is not supported.The suggestion is not supported. See above. |
| 2.18 | 2.18 **Definition of “functionary”**Western Cape GovernmentDelete “for purposes of section 2A”. In the proposed paragraph (a), care giver should be spelled consistently throughout (either care giver or care-giver). Regarding the proposed paragraph (b): there is no substantive provision empowering the Minister to designate the class or category of persons and entities. Add a substantive empowering provision.  | The proposal to delete the expression “for purposes of section 2A” is supported. It is agreed that there should be consistent spelling of the term care giver. A substantive provision is required, as the Minister cannot derive the power to appoint from a definition. Therefore a provision must be added to section 2A to read: “(3) The Minister may by notice in the *Gazette* designate a person or any institution as a functionary referred to in subsection (1)”. The expression “designated by the Minister by notice in the *Gazette*” in the definition of “functionary” must then be substituted with the expression “designated as contemplated in section 2A(3).”  |
| 2.19 | 2.19 **Definition of *‘harassment’:***2.19.1 ALT Advisory Research ICT Africa(a) It is highlighted the particular predicament associated with online domestic violence in the form of non-consensual distribution or manipulation of images, audio or video recordings; and online impersonation. There is a growing trend in which content, be it images, text, videos or audio, is manipulated by technology and is disseminated without the consent of the person that the manipulated content depicts. (b) Most recently, and through the development of artificial intelligence tools, the manipulation, manufacture or altering of content via technology has gained traction, and is commonly referred to as a “deep fake”, or as it relates to images, “photoshop”. The manipulation and non-consensual dissemination of such content is dangerous, harmful and amounts to harassment as envisaged in the Bill. (c) The online impersonation is where the perpetrator creates a hoax social media account, usually in order to post offensive or inflammatory statements in someone else’s name. They also impersonate someone else the target knows in order to cause harm.(d) To accommodate these instances, it is suggested that the following paragraphs be included in the definition of “harassment”: *(j)* the disclosure, without consent, by means of electronic communication, of an image, audio or video recording that has been manipulated or simulated through the use of technological tools and which depicts or reasonably resembles the complainant, for example, images, audio, and/or video mimicking speech or facial expression of the complainant so as to make it appear that the complainant has said or done something they have not; *(k)* creating an online account or profile using the complainant’s name, image or other identifiable information, without the consent of the complainant, to disseminate content or to communicate with other people;*(l)* creating an online account or profile using another person’s name, image or other identifiable information, in order to harass the complainant.”.(e) It is suggested that the terms “abusive, degrading, offensive or humiliating” in paragraph *(h)*(i) be defined in order to clearly provide for the type of conduct the subsection seeks to protect.2.19.2 MOSAIC Stalking is a well understood and widely used term. It is proposed that the term “stalking” be included in the definition of harassment as follows: ‘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, stalking, pursuing or accosting of the complainant or a related person; or”.2.19.3 Legal Resources CentreIt is submitted that there are no circumstances during which “following, watching, pursuing or accosting of 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” could be considered as reasonable. Therefore it is recommended that the word “unreasonable” be removed from the definition.2.19.4 Western Cape Government The Protection from Harassment Act should be brought in line with the Domestic Violence Act, once amended, to ensure maximum protection to persons who are not in a domestic relationship. In the proposed paragraph (c) add a reference to electronic communications. In the proposed paragraph (e) delete “for example”. In the proposed paragraphs (h) and (i) wording is not used consistently: “cause the complainant to receive a communication” vs “make a communication available”. In the proposed paragraphs (h) and (i) use consistent wording.2.19.5 Department of Community Health, WITS School of Public Health It is suggested the rewording this section to read as follows:(i) following, watching, pursuing the complainant or a related person that is considered unreasonable to the complainant;(ii) accosting the complainant or a related person;iii) 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 that is considered unreasonable to the complainant. 2.19.6 Western Cape GovernmentConsider adding a definition of **“harm”**.2.19.7 Werksmans AttorneysIt appears in paragraph *(c)* of the definition that for actionable harassment of this nature to occur there would need to be repetition. Without such repetition, a prospective complainant is effectively non-suited and therefore unable to apply for a protection order in terms of the Act. It is submitted that a singular instance of conduct may constitute harassment where the nature and/or content of the package, communication or other object is objectively offensive, obscene or grossly inappropriate in nature. | (a) and (b) The comments are noted.(c) This conduct constitutes an offence in terms of the Cybercrimes Act, 2020 and the perpetrator can be charged criminally for creating an account using someone else’s details. If the perpetrator is unknown to the complainant, a protection order can be sought under the Protection from Harassment Act. If the respondent is known and has domestic relationship with the complainant, then DVA may be used to obtain a protection order prohibiting the respondent from impersonating the complainant and to remove any communication disclosed electronically by the respondent.(d) It is not necessary to provide for these instances specifically in the Bill, as the court can make a specific order to prevent this and the removal or deletion of those already published. This is also covered by paragraph *(f)* of the definition of “emotional, verbal or psychological abuse”.(e) It is not necessary to define these terms as they are intended to carry their ordinary meaning.While not strictly necessary, the absence of the word ‘stalking’ has caused considerable unease, this inspite of the assurance that it falls under the umbrella term harassment. The inclusion of the word ‘stalking’ as suggested would not be remiss.This proposal is not supported. There may be circumstances in which reasonable watching, e.g. a sporting event, would not be considered harassment and may lead to unintended results.Noted. Electronic communications is already dealt with under paragraph *(b)*; tracking may take place in person or virtually hence the inclusion of the example; the difference between (h) and (i) is to cater for different scenarios, in (h) the complainant receives the communication and in (i) the third party does not need to have received it but has access thereto, which may include receiving it.Proposal not supported. The manner in which para (a) is currently worded allows for an objective reasonableness test and the subjective experience of the complainant. It is believed that this provides a balance. The complainant may experience any presence of the respondent as unreasonable which may result in applications for restriction of the respondent’s movements which may not be justified.Harm has been integrated into the definition of ‘domestic violence’ and is therefore the proposal is not supported. Noted. The paragraph specifically provide for repetition, since a single incident would likely not be considered harassment, except if the complainant experiences various single incidents which cumulatively could constitute harassment. A single act by the respondent could likely be covered by the definition other than harassment which could enable the complainant to obtain a protection order. |
| 2.20 | 2.20 **Definition of *‘intimidation:***2.20.1 ALT Advisory Research ICT AfricaIt is suggested that the following paragraph be added to the definition of intimidation to read: “*(d)* threats disseminated via electronic communications including threats of physical violence, or damage to property belonging to a complainant or any other person;”.2.20.2 Werksmans AttorneysIt is submitted that the revised definition of "intimidation" creates irreconcilable ambiguity within the Act and the Bill, as the content of the proposed revision in its current guise significantly overlaps with numerous other definitions in section 1 of the Act and the Bill. The definition as it currently is in the Act must be retained, otherwise the definition must be revised to remove the ambiguity created.2.20.3 **Definition of “person in a close relationship”** Western Cape GovernmentRather define the term “close relationship” and the introductory part must end with a colon instead of an em dash. | The proposal is acceptable and may be improved to read: “*(d)* conveying a threat, or causing a complainant to receive a threat, which induces fear of physical violence, or damage to property belonging, to a complainant or any other person through electronic communication,”.It is not clear how the definition creates an ambiguity. Therefore, the amended definition as proposed will be retained.This proposal is supported, but a dash will be used as opposed to a colon for consistency with other provisions of the Bill. |
| 2.21 | 2.201 **Definition of “physical abuse”** Western Cape GovernmentIn the proposed paragraph (c) replace “permission” with “consent” and consider that the proposed para (c)(ii) may possibly have unintended consequences, e.g. not allowing a person to administer Alzheimer’s or pain medication to a person with whom he or she is in a domestic relationship. | Noted. Consideration could be given to the substitution of the word. There may be scope for unintended consequences. However, the court will, if approached with an application, be best placed to consider the circumstances. |
| 2.22 | 2.22 **Definition of “related person”**2.22.1 MOSAICAmend section 1(j) of the Bill to include “service providers”.“‘related person’ means any member of the family or household of a complainant, or any other person in a close relationship to the complainant, including persons rendering assistance to the complainant”;”.2.22.2 Western Cape Government Consider the references to “related person” that have remained in this version of the Amendment Bill, taking into account the wide definition of “complainant”. | This proposal is not supported. If a service provider was threatened they would be able to apply for a protection order in their own right, as the complainant.The related person is not a complainant for purpose of the Bill. However, if directly affected a related person may bring an application for a protection order in their own right, if they are in a domestic relationship with the respondent. |
| 2.23 | 2.23 **Definition of “related person abuse”**2.23.1 Centre for Child Law It is recommended that this definition expressly include children as with the definition of a ‘related person’.**Recommendation**: The provision may be amended to read:“‘related person abuse’ means to threaten the complainant with causing of physical violence to, or the damage of property of, the complainant’s child or a related person.”.2.23.2 Western Cape GovernmentThe references to “violence” may limit the application of the definition. Consider replacing “violence” with “harm” or “abuse”. | A child is already included in the broad definition of ‘related person’. This proposal is not supported.A distinction is being made between harm and abuse and therefore the word ‘violence’ is used. This proposal is not supported. |
| 2.24 | 2.24 **Definition of “respondent”**Western Cape Government Provision should be made for special arrangements if the respondent is a child or does not understand the proceedings. | A child may be assisted by a related person to bring an application.  |
| 2.25 | 2.25 **Definition of “sexual abuse”**2.25.1 Centre for Child Law ‘Sexual abuse’ is defined in the Children’s Act in the following manner:‘Sexual abuse’ in relation to a child, means-(a) Sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted;(b) Encouraging, inducing or forcing a child to be used for the sexual gratification or another person;(c) Using a child in or deliberately exposing a child to sexual activities or pornography; or(d) Procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial sexual exploitation of a child.It is suggested that this definition of ‘sexual abuse’ in relation to a child as provided for in the Children’s Act be read into the definition of ‘sexual abuse’ of the Domestic Violence Amendment Bill. The inclusion would serve to complement the existing Children’s Act and extend protection from acts that constitute sexual abuse but that have not been added on to the definition of ‘sexual abuse in relation to a child’, thus extending equal protection to both adult and child victims of ‘sexual abuse’.**Recommendation**: It is recommended that the provision be amended to read as follows:“sexual abuse' means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant or child, whether or not such conduct constitutes a sexual offence as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007; and whether or not such conduct constitutes ‘sexual abuse’ in relation to a child as contemplated in section 1 of the Children’s Act (Act 35 of 2005)”.2.25.2 Active Citizens MovementThe present definition does not consider the complainant's consent, which is a key factor in identifying cases of sexual abuse. The definition needs to be amended to provide that sexual abuse constitutes any conduct that the complainant did not consent to. | The submission is noted. The current definition is wide enough to cover ‘sexual abuse’.Proposal not supported. The definition should be read in conjunction with the definition of ‘domestic violence’ i.e. where this conduct harms or inspires the reasonable belief that harm may be caused. If the parties consensually engaged in degrading or humiliating sexual acts, this may be raised by the respondent as a defense. |
| 2.25 | 2.25 **Definition of *‘sexual harassment’:***2.25.1 ALT Advisory Research ICT Africa(a) It is proposed the addition of the following paragraphs in the definition: “*(e)* disclosure, without consent, by means of electronic communication, of an image, audio or video recording that has been manipulated or simulated through the use of technological tools and which depicts the complaint in a sexual context, for example, a photoshopped image of the complainant in a sexual context they were not in, or a simulated or manipulated video recording or depicting the complainant engaging in sexual activity; *(k)* creation of an online account or profile using the complainant's name, image or other identifiable information, without the consent of the complainant, to disseminate content of a sexual nature; *(l)* creation of an online account or profile using another person’s name, image or other identifiable information, in order to sexually harass the complainant.”.2.25.2COSATU(a) The emphasis should not be on what the accused ought to have reasonably known, but rather on the fact that the conduct is unwelcome and demeaning to the complainant. This definition must be aligned with the Code of Good Practice on Sexual Harassment (amended in 2005) which is defined as  *“unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace, considering all the following factors:* *4.1 whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;**4.2 whether the sexual conduct was unwelcome;**4.3 the nature and extent of the sexual conduct; and**4.4 the impact of the sexual conduct on the employee”.*2.25.3 Social Justice Coalition & Legal Resources Centre(a) It is submitted that the definition of sexual harassment should include ‘sex-based harassment’. The definition should read: ‘unwanted verbal, written, or physical conduct based on a person's sexual orientation, gender, gender expression, or physical appearance’.(b) A clause should be added that includes sexual harassment on the basis of gender identity or orientation, such as offensive gestures and remarks that are intended to humiliate and treat someone differently based on their sex. An amendment to this effect would mitigate against the stigma, violence and discriminatory practices that the LGBTQI community face on the basis of their sexual orientation. (c) A paragraph should be added to include harassment on the basis of gender identity to read: “(e) Unwelcome explicit or implicit behavior, suggestions, gestures, messages or remarks of a sexual nature including a person's sexual orientation, gender, gender expression, or physical appearance that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances.”. 2.25.4 Active Citizens Movement The present definition should extend to explicitly state that sexual harassment constitutes any sexual advance that is made without the consent of the complainant, as consent is a contingent factor in cases of sexual harassment.**Recommendation** :‘sexual harassment’ means any—…“(e) sexual advance made by a respondent without the consent of the complainant.”. | (a) Proposal not supported. The proposed paragraph *(e)* is covered by paragraph *(b)* of the definition of “sexual harassment”, together with the proposed amendment by ALT to the definition of “electronic communications”. The conduct (in the proposed paragraphs *(k)* and *(l)*) of creating an online account or profile is not sexual harassment *per se*, but the actual dissemination of content through that account or on that profile is sexual harassment, which is covered by paragraph *(b)*.(a) The test is an objective one, which determines what a reasonable person in the position of the respondent knows or ought to have known to be unwelcome sexual attention. The proposed alignment will be at odds with what is intended in the Domestic Violence Act as opposed that which is confined to be applicable in the employment setting.(a) and (b) Paragraph *(b)*(ii) would cover sex-based harassment. The proposal is therefore not supported.(c) Paragraph *(b)*(ii) would cover this suggestion.The definition should be read in conjunction with the definition of ‘domestic violence’ i.e. where this conduct harms or inspires the reasonable belief that harm may be caused. If the parties consensually engaged in degrading or humiliating sexual acts, this may be raised by the respondent as a defense. |
| 2.26 | 2.26 **Definition of *‘spiritual abuse’***:2.26.1 Freedom of Religion SA(a) The amended definition is supported but can be strengthened by replacing the word “*abusing*” with “*committing domestic violence against …”.* (b) It is proposed that the Bill and the Domestic Violence Act be brought in line with the Constitutional Court’s judgment in *Moyo v Minister of Police* (dealing with Intimidation Act)*,* by requiring imminent violence wherever expressive conduct is criminalised.2.26.2 Stellenbosch Law Trust Chair in JusticeClarity is needed regarding whether the definition of “spiritual abuse” extends to parents who want their children to grow up with a certain religious or spiritual belief. The wording suggests that if the child has a difference of belief, then they cannot be prevented from practicing it. To what extent does this impact on the parent’s constitutional or parental rights? The provision as it stands will protect the religious rights of complainants but may have unintended impact. | (a) The proposal is not supported as the definition of spiritual abuse is a subset of the definition of domestic violence. Therefore, the word “abusing” is suitable in this regard. (b) The proposal to provide for imminent violence is not supported. This adds extra element that will require the complainant to prove that harm was about to happen, and this is a high standard that would likely hamper the complainant from getting protection. We repeat that the DVA protection order is a civil remedy. The section is intended to protect a child from being violated on the grounds of that child’s beliefs. Parents do retain their parental rights over the child, including the child’s spiritual beliefs which must be respected if that is in the best interests of the child. If the child is prevented from observing certain beliefs, such prevention would not necessarily amount to spiritual abuse, as the parents have the right to decide what is in the best interests of the child. |
| 2.27 | 2.27 **Definition of *‘stalking’*:**2.27.1 COSATUThe DVA defines both stalking and harassment and it is proposed that these definitions should be retained. The language and concepts in legislation must be accessible and understandable to ordinary people and workers. Stalking is a concept that is understood and used widely, and it is suggested that the Bill should therefore refer to harassment and stalking.2.27.2 SONKE Gender Justice Sonke reiterates the recommendation of the re-insertion of the term *“stalking”* which was initially in the Act. Stalking was defined “the unwanted and/or repeated surveillance by an individual or group towards another person, stalking also includes cyber stalking the repeated use of electronic communication to harass or frighten someone for example sending threatening email.” This should be an addition to the definition of “domestic violence” and/or “harassment”. The removal of stalking fails to acknowledge that it is a form of domestic violence, and forces a victim to seek redress through the Protection from Harassment Act thereby adding additional barriers in seeking adequate protection.2.27.3 Sonke Gender Justice; Social Justice Coalition & Legal Resources Centre The removal of stalking from the Act fails to acknowledge that it is a form of domestic violence and forces a victim to seek redress through the Protection from Harassment Act 17 0f 2011 thereby adding additional barriers in seeking adequate protection. This goes against a victim-centred approach as recommended in the National Strategic Plan on gender based violence and femicide. 2.27.4 MOSAICInclude stalking under “harassment”.2.27.5 Centre for Child Law & Legal Resources CentreThe definition of stalking should be retained and not deleted from the Domestic Violence Act.2.27.6 Werksmans AttorneysIt is submitted that it is neither necessary nor advisable to incorporate stalking under the definition of harassment as lay persons are relatively familiar with the term "stalking" and will have a more difficult time identifying it in the Act if it is no longer a standalone provision, and is rather an incidental aspect of another definition. It is suggested that the definition be retained as a standalone provision, if not, the following amendment to the definition of “harassment”:"(a) the unreasonable—(i) **stalking**, following, watching, pursuing or accosting of the complainant or a related person;".  | Many role-players, including those who commented on the Bill at the Portfolio Committee, are in favour of retaining “stalking”. Even though the Bill does not discard stalking but incorporates it as part of the definition of “harassment” like it is the case in the PHA, it is suggested that consideration be given to inserting “stalking” specifically in the definition of “harassment”. This may read as follows:**'harassment'** means **[engaging in a pattern of conduct that induces the fear of harm to a complainant including]**—*(a)* **[repeatedly]** stalking by 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;OR**'harassment'** means **[engaging in a pattern of conduct that induces the fear of harm to a complainant including]**—*(a)* **[repeatedly]** stalking or 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;”.OR Follow suggestion by Wersmans Attorneys proposal in paragraph 2.27.6 belowIn addition, the definition of “stalking” as a stand-alone term be retained.See above. The complainant is still able to obtain a protection order against stalking under the Act. See response to COSATU above.The proposal is supported. See response to COSATU above.The proposal is supported. See response to COSATU above.The proposal is supported. See response to COSATU above. |
| 2.28 | **Definition of ‘third party actor’**Western Cape GovernmentIn the proposed paragraph (a) replace “or” with “and”. | The proposal is not supported, and the use of “or” is correct. |
| 2.29 | **Definition of ‘weapon’****Werksmans Attorneys**It is recommended that the words "grievous" and "dangerous" be omitted from the proposed definition of "weapon". The qualification of bodily harm that is "grievous" or a wound that is "dangerous" relegates (ordinary) bodily harm and (ordinary) wounds to a state of unimportance, in circumstances where any bodily harm or wound should be afforded seriousness if occasioned by abuse. | The intention is to require that seizure of a weapon be ordered in very serious cases, and not all cases reported.  |
| 2.30 | 2.30 **Section 1(2)*(a)***2.30.1 Western Cape Government (a) In the proposed paragraph (a) add “which,” before “if committed”. (b) It is unclear whether the relief would be with regard to the third party actor or the respondent. Clarity is needed.2.30.2 Werksmans AttorneysIt is proposed that the word "which" be inserted before “if committed” in subsection (2)*(a)*. | The inclusion of the word “which” before “if committed” is supported.For clarity, the expression “against a third party actor” may be inserted after the word “relief”.The proposal is supported. |

**3. Clause 3 – Section 2B: Obligation to report domestic violence and to provide information**

|  | **Comments** | **Responses** |
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| 3.1 | 3.1 **Section 2B**3.1.1 COSATU(a) It is submitted that when cases are reported, care must be taken to ensure that the child is safe and not vulnerable to further harm.(b) A concern is raised about the possible unintended consequences resulting from the duty to report domestic violence against an adult. It would be a problem for a third party to report a case without first undertaking a risk assessment to ascertain the woman’s willingness to proceed with the case.(c) A concern is also raised about the criminalisation of people for not reporting domestic violence. This creates a situation where individuals who fail to report could end up being punished more severely than perpetrators. (d) It is proposed that rather citizens be encouraged to support and refer persons facing domestic violence to seek counselling and advice from a relevant service organisation or therapist. In addition, a more targeted approach rather than mandatory reporting for all is suggested, whereby this is a requirement for certain categories. It should be made a criminal offence when persons, including family members, are approached for assistance and/or intervention and refuse or fail to report and/or obstruct the matter.3.1.2 MOSAIC (a) The duty to report should not apply to all those with disabilities. Not all physical disabilities prevent a person from having agency from expressing their agency. Therefore the duty to report should only apply in respect of those with physical, psycho-social or intellectual disabilities which inhibit them from speaking out.(b) The following wording is recommended:‘‘2A. (1) A functionary, who in the course of the performance of their duties or the exercise of their functions obtains information which, after evaluation by him or her to believe or suspect on reasonable grounds— that a child, a person **[with a]** who presents with a physical, psycho-social or intellectual disability that impacts on their capacity to make decisions or an older person, is a complainant as contemplated in section 1–”.(c) It is also recommended that the Bill should specify the obligations upon the police and DSD upon receiving a mandatory report.3.1.3 SONKE Gender Justice Sonke cautions that persons with disabilities are not a homogenous group, and it should not be assumed that they all are on the same footing when it comes to their agency, and where they are fully competent to make decisions for themselves. This discriminates against them without adequate justification. It is recommended that the type of disability be determined whereby only if their disability impacts their ability to make a decision, should they be included within this group.3.1.4 Active Citizens MovementIt is believed that section 2A of the clause should insert the obligation of health care personnel to provide medical evidence. This proposal relates to the principal Act as it expands on the manner in which health care personnel must deal with domestic violence survivors and matters related thereto. Health care facilities are first-line responders to aggravated cases of domestic violence, whereby the complainant has experienced physical harm. Whereas section 2A explains the reporting responsibilities of functionaries and section 18B mentions the duty to provide the complainant with medical treatment/services, both of these sections omit the obligation of health care personnel to provide medical evidence of abuse. The J88 is a legal document that is completed by a medical doctor or registered nurse, documenting injuries sustained by the victim in any circumstance where a legal investigation is to follow. Given its significance, it should be compulsory that a health care personnel completes this form and makes it accessible to the relevant authority, and thus clearly stated as such.3.1.5 Western Cape Government(a) The proposed section 2A(1) refers twice to “prescribed in terms of section 18B”. Section 18B deals with directives, not regulations, but the definition of “prescribe” refers only to regulations made under section 19. There are other similar references, see e.g. proposed section 3(3)(c). Consider rewording the references to section 18B, or amending the definition of “prescribe”. (b) There is no indication of steps that will be taken if a functionary does not comply with proposed section 2A (see, in comparison, section 2B(4)). | (a) The reporting is made confidentially, without the possibility of the perpetrator being aware. The National Instructions and the directives for the Department of Social Development in terms of clause 18B will provide how the matter is to be dealt with when the matter is reported to a social worker. (b) The requirement of reporting acts of domestic violence against an adult has been removed from the Bill as it currently stands. (c) The criminalisation is in relation to the failure to report acts of domestic violence against vulnerable people, i.e. a child, a person with a disability or an older person. This is to discourage bystanderism in order to protect vulnerable people against harm. There is also a provision that those reporting cases in good faith will be protected against criminal, civil or disciplinary proceedings.(d) There is no mandatory reporting of acts of domestic violence against adults, but against vulnerable persons being a child, a person with a disability or older person. It would not seem ideal to advise a vulnerable person to go seek counselling or therapy. The best way of protecting them from abuse is to report the matter to the authorities.  (a) It is submitted that the current definition of disability does not apply to all persons with a disability. (b) The proposal is not supported as it inserts the definition of disability into the provision itself.(c) This is matter for the directives and National Instructions. The proposal is not supported as it may exempt functionaries and adult persons from reporting cases in instances where the victim should have been protected from harm. It would not be ideal to set out circumstances where a person should not be obliged to report due to the capability of the person to report on their own. This may lead to unintended consequences, where all cases are not reported due to the capability of a person to report their cases. Furthermore, as the cases will be reported to the authorities, investigations will be conducted, including a consultation with the victim, in which case it may be ascertained if the victim wants the case reported. While the completion of a J88 would be part of a medical examination in a criminal matter, it will not necessarily be completed during a routine examination. It may be important to flag the need for the completion of a J88 in the event that a criminal matter is pursued together with or after the application for a protection order in terms of the DVA. A doctor’s note evidencing abuse may suffice for purposes of the application for a protection order. However, it is not necessary to provide in the Bill the evidence that must be gathered and how to deal with that evidence, as that may be incorporated in the directives and the National Instructions.(a) Noted. The proposal is supported and the expression “prescribed in terms of” will be amended to read “contemplated in”, and the references to “prescribe” in section 18B will be amended to read: “provide for”. The expression “as may be prescribed in terms of” in section 3(3)*(c)* will also be amended to read: “as contemplated in”.(b) This is a matter that will be covered in the directives. Also a substantive provision should be inserted in section 18B to read: “(3) The directives referred to in this section must ensure that adequate disciplinary steps will be taken against any person who fails to comply with any directive.”. The current section 18B(3) will be renumbered as (4). |
| 3.2 | 3.2 **Section 2B**3.2.1 Sonke Gender Justice It is submitted that persons with disabilities (PWDs) are not a homogenous group and it should not be assumed that all PWDs are at the same footing when it comes to their agency and where they are fully competent to make decisions for themselves. This approach discriminates against a group without adequate justification. It is recommended that the type of disability be determined whereby only if their disability impacts their ability to make a decision, should they be included within this group.3.2.2 Social Justice CoalitionIt is recommended that ‘adult’ be substituted with ‘any person’ for the section to read: “A person who has knowledge that an act of domestic violence has been committed against any person in a domestic relationship must report such knowledge to a social worker or police official.” The provision as it is currently worded in the Bill excludes the duty to report on acts of domestic violence against minors, the elderly and mentally ill persons. Thus by adding in the word “any person”, this creates a duty to report all acts of domestic violence as it relates to all persons.3.2.4 Active Citizens MovementIn reference to 2B(1), it is submitted that all of the listed obligations should apply to an adult when an act of domestic violence has been committed against anyone and not just a child, person with a disability or an older person. | The proposal is not supported as it may exempt functionaries and adult persons from reporting cases in instances where the victim should have been protected from harm. See response to SONKE Gender Justice paragraph 3.1.3 above.The substitution of ‘adult’ with ‘any person’ would mean that another child in the home would be under an obligation to report. This proposal is not supported. A child would not be prevented from reporting if they should want to, but would not be under an obligation to do so. Applying the obligation in respect of any adult would remove the agency of the victim and remove his or her support network. |
| 3.3 | 3.3 **Section 2C**3.3.1 MOSAIC The following addition is proposed:2C. Upon receiving a mandatory report of domestic violence the South African Police Service must:a) investigate;b) conduct a safety check upon the alleged victim;c) if required, refer them to DSDd) if required, provide them with a list of shelters and/or public health establishmentse) if indicated, open a criminal case for the domestic violence matter;f) if indicated, refer the victim to court for a protection order.g) Hand the complainant a notice containing information as prescribed to the complainant in the official language of the complainant’s choice;h) Explain to the complainant the contents of that notice including the remedies at the complainant’s disposal in term of this act.Upon receiving a mandatory report of domestic violence The Department of Social Development are obliged to:a) investigate;b) conduct a safety assessment upon the alleged victim;c) if required, refer them to SAPSd) if required, provide them with a list of shelters and/or public health establishmentse) if indicated, refer the victim to court for a protection order. | The obligations on a police official are already contained in section 2 of the principal Act. Some of the proposed insertions may be better placed in the directives provided for in section 18B. |

**4. Clause 4: Section 3 – Arrest by peace officer without warrant and assistance to complainant**

|  | **Comments** | **Responses** |
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| 4.1 | **Section 3**4.1.1 MOSAIC(a) It is proposed in relation to section 3(3)*(a)* that the assistance provided following an incident of domestic violence must include safety planning. A safety plan is a personalized, practical plan that can help domestic violence survivors avoid dangerous situations and know the best way to react when they are in danger.(b) It is proposed that the address of shelters must not be distributed. It is imperative to the safety of all domestic violence survivors and shelter personnel that only the contact details and not addresses of shelters are provided. (c) In addition it is proposed the following:(3)*(a)* where necessary, make arrangements for the complainant to obtain medical attention and psychosocial support.and psychosocial support;4.1.2 Legal Resources CentreIt is recommended that ‘may’ be replaced with ‘must’ in section 3(1). This would place an obligation on peace officers to arrest any person who has committed an act of domestic violence. 4.1.3 Active Citizens MovementIn addition to the services provided by a peace officer who is not a member of the South African Police Service, which only provide temporary relief, the peace officer must also make arrangements for the complainant to be escorted to the police office, should the complainant wish to take legal action against the respondent, and back to their residence. Oftentimes cases go unreported due to complainants being located in rural areas and/or not having the financial means to cover transportation costs. Implementing this line of duty will help remove that hurdle. **Recommendation** :ADD: ; and(iv) make arrangements to escort and transport the complainant to the police station, should the complainant wish to lay a criminal charge and/or apply for a protection order, and return them to their residence after;”.4.1.4 Western Cape GovernmentProposed section 3(3) is similar to section 2, and should rather form part of section 2. Move proposed section 3(3) up to form part of section 2.4.1.5 Olerato MorekhureIt is proposed that peace officers should only do arrest and not compromise the case by trying to mediate before making arrest. | (a) A police officer or peace officer may not be best placed to assist the complainant while attending an incident of domestic violence to prepare a safety plan. The information handed to the complainant may include information in this regard. (b) Section 3(3)*(b)*(i) requires the regulations to prescribe the contents of the list.(c) The addition of psychosocial support is not supported. Medical attention may be directly relevant at the point of the incident. Information on psychosocial support could be part of the information shared in terms of (3)*(a)*(ii). The peace officer should not be expected to fulfill the role of multiple stakeholders. In addition, further assistance is in terms of section 3(3)*(c)* a matter for the regulations.The proposal is not supported. It may lead to unintended consequences, as it would require an arrest to be made in all instances. The mandatory arrest is provided in section 3(2) where there is violence against the complainant. The proposal is not supported as it may result in other dangers posed to the complainant and other victims of crime.The proposal is not supported as this section deals with peace officers who are not police officers, whereas section 2 is for police officers exclusively.Peace officers are not required to mediate the dispute between the parties but to effect an arrest immediately if the offense contains an element of violence against the complainant. |

**5. Clause 5: Section 3A – Entering of private residence for purposes of obtaining evidence**

|  | **Comments** | **Responses** |
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| 5.1 | 5.1 **Section 3A**5.1.1 Western Cape GovernmentThe scope of proposed section 3A(1)*(a)* is limited to an offence that has been committed, and does not include a mere threat of physical violence. Add a reference to a threat in proposed section 3A(1)*(a)*. 5.1.2 Legal Resources CentreWith regard to section 3A(2)*(a)*, we advise that the police official must audibly demand entrance, but also audibly announce his or her details as a member of the South African Police Services before entering such residence. | As section 3A relates to obtaining evidence it would be restricted to an act of violence and not a threat thereto. The proposal is not supported.Noted. The proposal reflects what is already required.  |

**6. Clause 6: Section 4 – Application for protection order**

|  | **Comments** | **Responses** |
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| 6.1 | 6.1 **Section 4**6.1.1 Stellenbosch Law Trust Chair in JusticeThe amendment in section 4(1)*(a)* providing for online application is commended in its facilitation of access to justice for complaints under the Act. Given the restricted movement that complainants can face due to their personal circumstances as well as the Covid-19 related regulations, this is a very crucial addition to the act.6.1.2 Women’s Legal CentreThe deletion of the words ‘shall forthwith’ from section 4(7)*(b)* is not supported, but WLC advocates for the substitution of said wording with ‘must immediately’ or ‘on the same day’ submit the application to the court (magistrate).(b) Many applications are not processed on the same day on which the application is lodged. This means that complainants often leave court without knowing if their application has been successful, and whether an interim protection order has been issued by the court. They therefore have to subsequently attend court on a court day to determine the outcome of the application.(c) It is recommended that section 4(7) be amended to read:“(7) The clerk of the court must submit an application referred to in subsection (1)*(b)*(i) and supporting affidavits and affidavits to the court on the same day as the application is brought.”. **Section 4(3)*(b)***6.1.4 Social Justice Coalition It is submitted that it is important for the Act to clearly state who is deemed to be unable to give consent. It is therefore recommended the Act includes the following persons who are unable to give consent:(a) A minor;(b) Mentally ill persons;(c) Unconscious persons;(d) A person certified by a competent court as being unable to give consent for purposes of reporting an act of domestic violence.6.1.5 Department of Community Health, WITS School of Public HealthThe substitution of section 4(3) mentions a “child, under the age of 16, […]” and mentions a child (referring to people under the age of 18). The use of both these terms may lead to misinterpreting the age of the people being referred to. It is suggested that the wording of this section be reviewed to be explicit about the age of the people mentioned.6.1.6 Western Cape Government (a) In the proposed section 4(3)*(a)* consider adding a reference to a functionary, and consider deleting the word “material”. (b) In the proposed section 4(5) non-sensical wording (“… belief exists, that the complainant is suffering harm … if the application is not dealt with immediately”). Rephrase.(c) In the proposed section 4(7)*(a)* add a reference to supporting affidavits, and in the proposed section 4(7)*(b)* add “as soon as is reasonably possible” (see proposed section 4A(4)).6.1.7 Social Justice Coalition; LRCIt is recommended that the word ‘may’ in section 4(6) be substituted by ‘must’; this would make it mandatory for persons who have a duty to report the commission of acts of domestic violence. The recommended section would read as follows: *“Supporting affidavits by persons who have knowledge of the matter concerned* ***must*** *accompany the application.”*. | Noted.The submission is supported as it seems prudent that a time frame be set for the submission of the application to the court. The removal of the “shall forthwith” removes the obligation of the clerk of the court to submit the application to the court immediately. To require immediate submission of the application seems more appropriate.(b) This concern is resolved by the provision that requires the clerk of the court to immediately notify the complainant of the outcome of the application electronically.(c) The proposal is accepted, and the section may be amended to read: “(7) The clerk of the court must immediately submit an application referred to in subsection (1)*(b)*(i) and supporting affidavits to the court.”.This proposal is not supported. This category of persons is found in the description in section 4(3)*(b)*(ii) “a person who, in the opinion of the court, is unable to provide the required consent.” The list proposed is limited as opposed to what is in the proposed amendment.The submission is noted and the provision will be reconsidered.(a) It is agreed that reference to a functionary should be made as the term covers the list of officials deleted from this paragraph. The word ‘material’ is a clarifier and excludes a person with a peripheral interest in the wellbeing of the complainant.(b) The proposal is not supported. The addition to this subsection provides that sufficient information is provided to the court in the application to deal with the application after hours.(c) The proposal is supported but the insertion must be “any supporting affidavit” to align with section 4(6). In section 4(7)*(b)* the word “immediately” will be added after “must”.The proposal is not supported as this will make the submission of supporting affidavit mandatory, whereas this submission is the prerogative of the complainant. |

**7. Clause 7: Section 4A – Domestic Violence Safety Monitoring Notice**

|  | **Comments** | **Responses** |
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| 7.1 | 7.1 **Section 4A**7.1.1 Stellenbosch Law Trust Chair in JusticeConsideration should be given to inserting a buffer provision in clause 4A requiring an interface with the person accused of domestic violence, to advise them of the implications of the order and of available therapeutic services should they have a condition predisposing them to resorting to violence.7.1.2 Legal Resources CentreThe inclusion of a safety monitoring notice is welcomed, however, it is recommended that section 4A(4) be amended to include a time frame and not be left open ended. It would be useful to state that the clerk must submit the application to the court within, for example, 7 days. This would ensure that the monitoring notice application is not lengthy and that women receive protection as a matter of urgency.7.1.3 Western Cape Government(a) The proposed section 4A is not in the correct place, as the fact that it is inserted between the sections dealing with applications for protection orders, and the consideration thereof, is confusing. Section 4A should rather be moved to after section 9. (b) The proposed section 4A does not make provision for urgent applications, as is the case in proposed section 4(1)*(b)*(ii). Provide for urgent applications / applications outside court hours. (c) In the proposed section 4A(7) replace the em dash with a colon. In section 4A(7) the court should rather order the station commander of a police station in the area where the complainant resides, to act as contemplated in the proposed subsection (7) (instead of in the area of jurisdiction of the court). (d) In the proposed section 4A(7)*(a)* replace “complainant wellbeing” with “complainant’s wellbeing”.(e) In the proposed section 4A(9)*(b)* indicate that unsuccessful applications must also be captured with a note that the order was not granted. (f) In the proposed section 4A(12) the reference to section 18(3) is confusing, as said section does not stipulate that the DG must be consulted. 7.1.4 MOSAICIt is submitted that if a domestic violence safety monitoring notice is implemented as set out in the Bill, the notice and associated monitoring by the SAPS will increase the safety of applicants. However, it is proposed that in the process of formulating the National Instructions in terms of sections 4A(12) and 18(3), the SAPS consult with civil society organisations and service to ensure that instructions are victim-centred and responsive to the needs of the complainant. In addition, a strong and diligent monitoring system of the carrying out of the instructions must be included in the National Instructions. 7.1.5 Werksmans AttorneysThe possible usefulness of the Domestic Violence Safety Monitoring Notice and processes envisaged in the proposed provision is solely dependent on the efficacy of its implementation by the South African Police Service. It is necessary that sufficient technical and human resources within the SAPS are allocated to successfully and efficiently implement the processes envisaged in this provision. | The proposal is not supported as it would require the member of the SAPS who is serving the Domestic Violence Safety Monitoring Notice on the respondent to advice the respondent to go for therapy. This is the function of the court which, in terms of section 7(2) of the Act, can impose a necessary condition for the protection of the complainant, and this would include a condition that the respondent must undergo therapy. It is submitted that the words “as soon as is reasonably possible” reflects the immediacy with which such applications should be submitted by the clerk to the court. The proposal is not supported.(a) The application for the domestic violence safety monitoring notice is to be made simultaneously with the application for the protection order or where an interim order is not granted, any time before a final order is considered. The placement together with the application for a protection order is therefore correct. (b) If an urgent application is made for a protection order the application for the monitoring notice should be done simultaneously. (c) The use of dash is correct. The proposal that the police station should be in the area where the complainant resides is supported as the residence and the station in the area of the court may not be in the same jurisdiction as the complainant’s residence. This will be reconsidered.(d) The proposal is noted. Will be corrected.(e) The proposal is noted and supported. A pattern of conduct relating to applications within a relationship or more than one relationship may emerge, which while not predictive of the outcome, may assist the presiding officer in considering the matter. This is information that the regulations will, in terms of section 4(7)*(a)*, prescribe to be captured in the repository (f) The reference to section 18(3) pertains to the issuing of national instructions. The proposed section 4A(12) therefore provides that in giving effect to this section the National Commissioner should consult with the Director-General.Noted. The formulation of National Instructions is done after consultation. Noted. This suggestion will be covered by the training of personnel. |

**8. Clause 8: Section 5 – Consideration of application and issuing of protection order**

|  | **Comments** | **Responses** |
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| 8.1 | 8.1 **Section 5**8.1.1 Women’s Legal Centre(a) It is proposed that section 5(1) should read:“(1) The court must **[as soon is reasonably possible]** on the same day as the application is lodged consider an application submitted to it in terms of section 4(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.”.(b) The amendment to section 5(3)*(c)* now inserts a provision for the complainant to be informed once the interim order is issued. It is recommended that this be done immediately once the order is issued, and not only when the interim order is served on the respondent. (c) It is proposed that in sections 5(3)*(c)* and 5(4)*(b)* the ‘prescribed form and manner’ in which the complainant must be informed must include mechanisms such as via telephone, SMS, electronically or hand a copy of the application with the interim protection order.(d) The amendments in sections 5(4)*(b)* which now require the clerk of the court to inform the complainant that the interim protection order is not issued are welcome. However, it is essential that a process and practice of informing complainants immediately of the outcome of the application is regulated by the regulations. (e) This process must include telephonic or electronic communication methods to communicate the outcome to the complainant on the same day as the interim order is either issued or not issued. (f) It is submitted that unless clear direction is provided in the regulations, the courts will continue to utilize informal mechanisms to inform complainants of the outcome of the interim order which are not granted (but the respondent is ordered in terms of section 5(4)*(a)* to show good cause why the protection order should not be granted), and this very often places an unfair burden on complainants of returning to or phoning the court, or contacting the police to determine the outcome of the application, or if service has been successful on the respondent. (g) In many courts, the clerks automatically informally provide a ‘return date’ to the complainant at the time the application is lodged. This informal process provides a ‘return date’ irrespective of whether an interim order is issued or not (at the time the date is provided, the clerk has not yet submitted the application to the court (magistrate), so there is no known outcome at this stage). It is therefore essential that the regulations clearly set out processes in situations both where the interim order is issued and where it is not issued, on how to effectively inform complainants of the status of the application to avoid the courts using their own informal practices to inform women as to the status of their applications. These court practices vary widely and are inconsistent. Practice that is informal and which is not prescribed in terms of the Act and attendant regulations cannot be monitored and the state role players responsible for implementation thereof cannot be held accountable. This must be rectified by legislation.(h) The amendments are silent on the manner (‘prescribed form’) in which complainants must be notified by the clerk of the court in terms of amended sections 5(3)*(c)*(i) and 5(4)*(b)*. It is recommended that this notification is done immediately i.e. on the same day that the interim order is issued or the notice to show cause is issued, and that notification is done by telephone, SMS, and email (electronic notification), followed by the formal service. 8.1.2 MOSAICIt is submitted that in addition to the provision in section 5(1), where possible, all applications be considered on the date of application. This submission is made in an effort to increase the safety of the complainant, understanding the risk taken by the complainant in approaching the court. The following text is offered as an option for inclusion in the Bill:5(1) The court must **[as soon as is reasonably possible]** consider an application on the same date as application is submitted to it in terms of section 4(1)*(b)*(ii) or (7).8.1.3 Social Justice Coalition; LRCIt is recommended that the word ‘may’ in section 5(5)*(a)* be substituted with ‘must’. This substitution would warrant urgency and ensure the courts deal with domestic violence matters timeously. The recommended section would read as follows: “The return dates referred to in subsection (3)*(c)* and (4) must not be less than 10 days after service…”.8.1.4 Western Cape Government(a) In the proposed section 5(1) the cross-reference should be to section 4(1)*(b)* (not only 4(1)*(b)*(ii)). The reference to subsection (7) should be deleted. (b) In the proposed section 5(1A)*(a)* the two references to the Mediation Act is confusing. Rephrase. (c) In the proposed section 5(3)*(c)* add “order” after “protection” in the introductory part. (d) In the proposed section 5(4)*(b)* add that the complainant should also be notified of the return date contemplated in (4)*(a)*.(e) In the proposed section 5(6) inconsistent wording. There should be proof of this point in time. In the proposed section 5(6) replace “brought to the attention of” with “served on”.8.1.5 Werksmans AttorneysIt is proposed that the word "order" be inserted after the word “interim protection” in section 5(3)*(c)*.8.1.6 Olerato MorekhureOfficer accompanying complainant to deliver protection order should explain contents and remedies without imposing any verbal abuse towards the respondent. | (a) To deal with protection orders on the same day is dependent on many factors such as the availability of supporting evidence where this is required, etc… To consider the application as soon as possible is sufficient to accommodate the courts which are not able to consider the matter on the same day.(b) The clause does provide for the clerk of the court to inform the complainant upon the issuing of the protection order.(c) The regulations will cater for this proposal.(d) Noted. (e) The regulations will stipulate the manner of notifying the complainant of the outcome of the application, which will include electronic notification. This notification could be done immediately after the court has refused the issuing of the interim protection order, thereby removing the concern raised in paragraph (d) above.(f) The regulations will provide for electronic notification of the outcome of the application for an interim protection order. (g) The provision cannot be imposed on all courts, since it may be a burden on the courts that are not able to do so. The standard provision to be applicable across all courts would be that the complainant will be notified immediately and electronically when the interim order is granted or not. If it is not granted, the notice to show cause with the return date will be served on the respondent.(h) The regulations will provide for the manner of notification, including electronic notification.The proposal stipulating that the application must be considered on the same date is not supported as it may have unintended consequences. There may be a legitimate reason for rolling a matter over till the next day. The use of the words “as soon as is reasonably possible” indicates immediacy, which would include hearing the matter on the same day, if possible.The submission that the return date ‘must’ not as opposed to ‘may’ not be less than 10 days is not supported, as grammatically it has the same effect.(a) It is agreed that the cross-reference should be to section 4(1)*(b)* and that subsection (7) should be deleted.(b) It is agreed that the double reference to the Mediation Act in this sub-section is superfluous and should be rephrased. (c) This proposal is supported. The word “order” has erroneously been omitted in section 5(3)*(c)*.(d) The notification of the complainant of the return date is supported. Therefore, the expression “and of the return date” may be added after the word “order” in section 5(4)*(b)*.(e) The proposal to substitute the words “brought to the attention of” with “served on” is supported.Agreed.The training of personnel will ensure that proper processes are followed. |
| 8.2 | 8.2 **Section 5(1A)**Stellenbosch Law Trust Chair in Justice(a) The deletion of the word “dependant” in section 5(1A)*(a)* will remove the protection available to majors who are dependents and impacted by domestic violence. This particularly excludes vulnerable groups such as persons with disabilities or who are of an advanced age.(b) It is submitted that a provision in section 5(6) that an interim protection order is only in force once it has been served on the respondent, results in an unprotected window from the granting of the order to the service on the respondent. Due to the urgency with which most complainants require protection, it is suggested that the interim protection order is effective from the moment it is issued by the court. The application for the protection order is *ex parte*, therefore considering the order to be in force from issuing without having been served upon the respondent is not out of the ordinary as the respondent has not been party to proceedings up to this point. | (a) Not supported. The section deals with the appointment of a Family Advocate to conduct an investigation regarding the welfare of any child and children who are above the age of 18 are not covered by this provision. The expression “any child” covers every child, whether dependent or not, and whether with a disability or not.(b) The provision conveys the intention that the respondent is bound by the order that he or she is aware of. It would not make sense for the order to apply to the respondent if it has not been brought to his or her attention. If the respondent commits a prohibited act of domestic violence (e.g. by calling the complainant), the respondent could not be guilty of breaching a protection order since the order would not have been brought to his or her attention.  |

**9. Clause 9: Sections 5A, B & C**

|  | **Comments** | **Responses** |
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| 9.1 | 9.1 **Clause 5A : Attendance of witnesses**9.1.1 Active Citizens Movement (a) In reference to section 5A(1), a concern is that the items mentioned, that constitute as evidence, are too limited and should include all forms of tangible evidence (such as video tapes, pictures etc.) instead of specifying just any book, document or object.(b) In reference to section 5A(2)*(b)*, a health care personnel who filled in the complainant's J88 form, should be present as a witness. One of the short-comings is that during court proceedings, medical information taken from the J88 and presented in the courts, may be of inferior value because of misinterpretation by lawyers, police officials, social workers or health care workers who didn't actively complete the form and attend to the complainant - thereby leading to the dismissal of the evidence. This can be remedied by the health care personnel who filled in the J88 form being present to accurately represent and report medical evidence.   | (a) The ordinary dictionary meaning would apply, meaning that the word “object” would include video tapes, pictures etc.(b) The inclusion of medical evidence is the prerogative of the complainant. As the application is initially heard in chambers witnesses are not usually called. It would be the prerogative of the complainant to request the health care professional to act as a witness on the return date. Any medical evidence of abuse could however be attached to the affidavit or be presented on the return date. As this is not a criminal matter a J88 would not necessarily be completed. |
| 9.2 | 9.2 **Section 5B**9.2.1 Centre for Child Law A concern is raised regarding the proposed section 5B(1)*(b)*(iv) and (v) of the possibility that the power to request “any information” may be subject to abuse and could potentially be challenged on the grounds of the violation of the right to privacy. It is proposed that clarity be given on what this information may include, such clarity could be given in the Act itself or the regulations. 9.2.2 Women’s Legal CentreSection 5B(10) makes provision for an inquiry by the court to determine the ability of the complainant to pay said costs. The Bill presumes that the complainant is liable for the costs, and the burden to prove that he or she is not able to afford the incurred costs rests on the complainant. It is recommend that this clause be reconsidered and that the state be made responsible for any costs incurred in terms of this provision. 9.2.3 Centre for Child Law It is suggested that extreme care be taken in the implementation of the provisions proposed in section 5B(10)*(a)* and *(b)*. Many complainants, including children, may not be in the financial position to pay for services offered by the communication service providers. There is a high risk that if not implemented with care, much flexibility and without delay there will be a barrier to access to justice. It is very important to ensure that complainants are provided with support in this regard to prevent any barriers to access to justice. It is highly recommended that a provision for waiving of such fees be inserted.**Recommendation**:* Insert subsection (iii) to the proposed section 5B(10)*(b)* for the waiver of fees to read: “(iii) fees payable by the complainant may be waived if it is found that the complainant is unable to pay the costs involved.”.
* Regulations and Gazette notices must provide for flexibility in the manner in which this proposed provision will be implemented to ensure that complainants are not denied access to justice.

 9.2.4 Social Justice Coalition(a) It is submitted that the legislature considers making an option available for persons who do not have access to cellphone and public telephone lines. Informal settlements in the country that still do not have access to electricity and rely on other community members nearby who have access to electricity to charge their phones. In light of the high statistics of unemployed youth in South Africa, majority of people are not going to afford this service, reality is that they would be left stranded should they require access to the toll-free line.(b) It is of paramount importance to prioritize the building of more SAPS offices closer to informal settlements that are fully functional and would assist survivors with having protection services. Further divert resources in existing SAPS offices to ensure efficiency and a faster turnaround time to complaints and investigations.Western Cape Government(a) The proposed section 5B should also apply at the final order stage, as the respondent could start using electronic means after the interim order was decided. (b) In the proposed section 5B(1)(b)(v) replace “questions” with “question”. (c) In the proposed section 5B(5) it is unclear why the court has a discretion to consider issuing an order at this stage. Proposed section 5B(5) consider making this mandatory. (d) In the proposed section 5B(6)(a) indicate whether the reference to the order is to an interim or final order, or both. (e) In the proposed section 5B(6)*(a)* obligate the court to indicate a time period within which the service provider should comply, and order that the service provider should report to the court on that date.(f) In the proposed section 5B(6)*(b)* it is submitted that the 14 day period is too long, as the information will still be available on the internet if it was posted on a social media platform. In the proposed section 5B(6)*(b)* reconsider the 14 day period.(g) In the proposed section 5B(8) it is unclear why the provisions of section 4(7) of the Protection from Harassment Act is duplicated in the Bill. Section 5B(8) should rather insert a cross-reference to section 4(7) of the Protection from Harassment Act.(h) In the proposed section 5B(10) the information taken into account will only apply to the ability of the complainant to pay the costs. There might well be circumstances where the respondent should be held liable for the costs – see proposed section 15(2). Section 5B(10) should provide that the court may hold an inquiry, and must decide who is liable for the costs (instead of stating that the complainant is liable for costs, and only inquiring whether the complainant can pay the costs). (i) In the proposed section 5B(10)*(c)* the reference to the State is vague. Section 5B(10)*(c)* must indicate which department is responsible. (j) In the proposed section 5B(10)*(d)* indicate what will happen if both the complainant and respondent are indigent. (k) In the proposed section 5B(11) add “provider” in introductory part. (l) In the proposed section 5B(11)*(a)* replace “(3)*(b)*” with “(4)”. (m) In the proposed section 5B(11)*(b)* the reference to subsection (6)*(b)* is incorrect. (n) In the proposed section 5B(11)*(c)*: the reference to subsection (6)*(c)* is incorrect. | The Bill would need to be read together with the POPIA and other pertinent legislation to ensure that the rights to privacy of the respondent are respected. Information that may be sought should be for the purposes of identifying the person who sent the electronic communication. The court is also unlikely to abuse this provision by requiring information that is not related to the identification of the person as contemplated in the section. The state should not be made liable for the costs incurred for disputes between the private individuals. It is prudent, as a starting point for the complainant to pay, but if unable to do so, then the state can carry the costs. These are the costs due to the electronic communications service provider.Noted. The court is required by section 5B(10)*(a)* to hold an enquiry into the means of the complainant, and may after the enquiry make an order including an order directing the State to pay costs within available resources as contemplated in section 5B(10)*(c)*.This proposal is not supported. Orders as to costs of service and directions are dealt with under the amended section 15 of the DVAB.The regulations will provide for places where applications can be made free of charge such as the courts, police stations, shelters *etc.*(b) This is not a matter for this Bill.(a) The exposition of this section is not supported. There is nothing prohibiting the court from considering this as evidence on the return date.(b) It is agreed that this should be corrected.(c) The proposal to make the issuing of an interim protection order mandatory at this stage is not supported. The court would need to consider all the evidence before it to make a decision in this regard. To make the provision mandatory would take away the court’s discretion.(d) The provision applies to both orders, otherwise it would have been specified.(e) This proposal is supported as the continued hosting of the communication continues to cause harm until it is removed. Consideration will be given to the timeframe, and preferably “immediately” so that the order is given effect as soon as it is received.(f) Proposal not supported. The order must be given effect to, but if the application to set aside or amendment is sought it must be brought within 14 days.(g) The intention is for the DVA to be understood in its own context. The consequent amendment of the PHA to align the new provisions with the aforesaid Act may lead to unintended consequences if a cross-reference is used.(h) The respondent would only be held liable if the court decides that there is sufficient reason to issue a protection order. The complainant would need to cover the cost at this point unless unable to, as the identity of the perpetrator is still to be established. It should be read with section 5B(10)*(c)*.(i) The reference used is a drafting convention and as such is correct. The proposal is not supported.(j) As the complainant is primarily held responsible it would not be necessary to assess the indigence of the respondent at this point.(k) It is agreed that the word “provider” should be added after “service”.(l) This proposal is supported, and the reference to (3)*(b)* will be replaced with (4)*(d)*.(m) This proposal is not supported. The reference to (6)*(b)* is correct. However, for greater clarity, subsection (6)*(b)* may be amended by adding “by way of affidavit” after the word “apply”. (n) Agreed. The reference must be to (6)*(a)*. |
| 9.3 | 9.3 **Section 5C**9.3.1 Western Cape GovernmentIn the proposed section 5C(1) the court should also consider pending cases, as some cases take years to be finalized.9.3.2 Legal Resources CentreIt is recommended that the word ‘may’ be replaced with ‘must’ under section 5C(2)*(c)*. This would ensure that courts grant urgent relief when necessary. The recommended section would read as follows: “Must, where it is satisfied that urgent relief against an act of domestic violence is necessary...”. | This is covered by section 5C(2) which requires the court to deal with other applications pending between the parties.The use of ‘may” is correct as the use of “must” will remove the court’s discretion which must be guided by the circumstances of the case. The words “it may” before “notwithstanding” must be deleted. |

**10. Clause 10 – Section 6: Issuing of final protection order**

|  | **Comments** | **Responses** |
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| 10.1 | 10.1 **Section 6(1A)**10.1.1 COSATUIt must be ensured that processes are expedited and that mechanisms are developed to guard against delays caused by perpetrators in missing court dates, amongst other delaying tactics. The availability of funding for legal representation and paralegal support for victims/survivors is crucial in this regard.10.1.2 MOSAIC(a) A concern is raised regarding the provision for the court to discharge the interim protection order if the complainant does not appear on the extended date. It is proposed that provision be made for the application to be considered in the absence of the complainant and/or respondent. Understanding the nature of domestic violence being that of power and control, there are good grounds to presume that respondents or related persons could keep the applicant away from the court with the knowledge that the IPO will be discharged. (b) It is submitted that the court should consider the application and where prima facie evidence of domestic violence is present, the court should to move to finalise the order.10.1.3 Legal Resources CentreWith reference to section 6(5)*(a)*, it is recommended that the protection order be served within a stipulated time frame after issuance. This will serve as a means of expeditiously bringing justice to all parties. The recommended section would then read as follows: “the original of such order must be served on the respondent within 48 hours of issuance by the court;”.10.1.4 Active Citizens MovementIn relation to section 6(2B), the option of discharging the matter, mentioned in 5(1)(ii), in the event where the complainant does not appear or both the respondent and the complainant do not appear, should be completely removed. Additionally, it is proposed that the clerk of the court should contact both the respondent and complainant to enquire about their absence, and order a member of the South African Police Service to conduct a visit to the complainant's residence, to ensure the safety of the complainant.10.1.5 Western Cape Government(a) In the proposed section 6 provide for the automatic cancellation of a warrant if the order is not made final, and the notification of the police station concerned.(b) In the proposed section 6(1)*(b)* it is unclear why the reference to “is committing” is being deleted, as domestic violence can be a continuous act. The reference to “is committing” should not be deleted. (c) In the proposed section 6(2A) it is unclear why reference is only made to notifying the complainant, and not the respondent too (see proposed section 6(2B)*(b)*). The respondent should also be notified. (d) Regarding the proposed section 6(3)*(a)* there are no sections 51A and 51C in the Magistrates Courts Act, 1944.(e) In section 6(7)*(a)* replace “brought to the attention of the respondent” with “served on”.  | Clause 6(1A) of the Bill enables the court to issue a final protection order in the absence of the respondent if the court is satisfied that there is a proper service of the application and that the respondent has committed or is committing an act of domestic violence. The Bill amends section 19 (Regulation) to provide for financial assistance at State expense to a complainant, respondent or a witness. (a) If the complainant does not or both parties do not appear on the return date the court is required to extend the return date, but may discharge the matter on the extended date if the complainant does not appear. If the complainant did not appear due to being prevented by the respondent, this information should be disclosed to the court and the court should give directions in this regard. The discharge in this instance would prevent instances where the application is lodged and the complainant does not appear every time the matter is before the court. (b) The court must, in terms of section 6(1) and 6(1A), issue a final protection order where the respondent is absent and proper service has been effected and a proper case has been made out. An interim order gives immediate relief to a complainant where a respondent has not been served papers as yet. Given the urgency of these matters and the further harm that may occur and which is being sought to be prevented, the proposal that these orders should be served within 48 hours of issuance is supported.The matter is discharged only if the complainant does not appear on the extended date, and this is necessary so that there should be an end to litigation. The court should not be expected to extend the date every time the complainant is absent. The option for the clerk of the court to establish the absence of the parties or for a member of the SAPS to visit the residence would require additional resources be expended which would not be necessary in all instances. The court should be able to discharge the matter since State resources would have been used unnecessarily where for example the complainant and respondent have reconciled and do not wish to proceed. (a) The warrant of arrest issued together the interim protection order is dependent on the validity of the protection order. The expiry of the protection order on the return date to court indicates the expiry of the warrant of arrest. It is therefore not necessary to expressly provide for cancellation of the warrant.(b) The proposal is supported. An example could be economic abuse which is not interrupted when the complainant is not in the physical presence of the respondent.(c) The respondent is not notified as he or she would have made appearance at court and would be warned to appear on the extended date.(d) The Criminal Matters Amendment Bill is inserting sections 51A and 51C in the Magistrates Courts Act, 1944.(e) This proposal is supported.  |

**11. Clause 11 – Section 6A: Integrated electronic repository for domestic violence protection orders**

|  | **Comments** | **Responses** |
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| 11.1 | 11.1 **Section 6A*:***11.1.1 ALT Advisory Research ICT AfricaIt is submitted that in developing the directives relating to the development of the integrated electronic repository for domestic violence protection orders, the following factors must be considered: (i) that the sensitive nature of the information should inform the development of the directives, particularly with regards to the processing of, and access to, such information;(ii) repositories of information pose a significant risk to the rights of data subjects, and therefore in light of the sensitive nature of the information to be contained in the repository, it is submitted that appropriate technical and organisational measures must be taken to safeguard its integrity and confidentiality; and(iii) the description of the repository envisages its integrated nature, but the Bill is silent on which systems and/or government departments it will integrate with. It is submitted that access to the information should be limited to the necessary personnel.11.1.2 COSATUThe establishment of the integrated electronic repository is supported, but it is proposed that service providers and complainants should be able to access the repository within clear parameters.11.1.3 Legal Resources CentreThe development and establishment of an integrated electronic repository for domestic violence protection orders is welcome, however it is submitted that a timeframe should be specified within which the Minister has to establish the integrated electronic repository. It is further suggested that under section 6A(2), it should clearly indicate that the designated person is responsible for ensuring that the integrated electronic repository for domestic violence is updated on a continuous basis and functioning in the way envisaged. The duties of the designated person in terms of section 6A(2) should include ensuring that all Magistrate Courts where a protection order can be applied for have internet access. Moreover, the Magistrates Courts should have access to the electronic repository for domestic violence on a continuous basis. 11.1.4 Western Cape Government(a) In the proposed section 6A it should be indicated that relevant officials should have access to the repository. Add cross-references to the applicable legislation, or amend the applicable legislation to state specifically that the repository should be checked. (b) It is submitted that the United Nations Convention on the Elimination of All Forms of Discrimination against Women General Recommendation No. 35 (2017) provided guidance on coordination, monitoring and data collection. The proposed section 6A should consider expanding the types of data collected guided by international best practices. The implementation may require creating integrated data systems where information is pulled through from other systems where the relevant data is being collected.(c) In the proposed section 6A(1) delete comma after “must”. In the proposed section 6A(3)*(i)* the wording is not aligned to the definition of “capture”. Therefore, section 6A(3)*(i)* should refer to the manner and format of the documents to be captured. | The submission is noted and the directives will deal with the suggestion.The regulations will make provisions for the repository and its accessibility.The submissions are noted, however they relate to procedural and implementation matters which is best not dealt with in the primary legislation.(a) This is a matter for training and should be included in the directives and national instructions.(b) The type and form of data collection, while important, is not a primary legislative function. This would form part of the establishment of the integrated justice system currently under development and the repository which would form part thereof.(c) The proposal is supported insofar as the deletion of the comma after “must”. The definition of capture will be amended to read: “… as may be provided for in the directives contemplated in section 6A(3)*(i)*.”. |

**12. Clause 12 – Section 7: Court’s powers in respect of protection order**

|  | **Comments** | **Responses** |
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| 12.1 | 12.1**Section 7** 12.1.1 COSATU(a) Intimate partner violence and domestic violence impacts severely on women workers, and can spill over into the workplace. Violent abusers often follow women to the workplace because they know this is where they can find the victim.(b) It is submitted that the President has finally announced the commitment of the government to ratify Convention 190 on the elimination of violence and harassment in the world of work. The Convention was adopted in June 2019, and ratification is way overdue. It is proposed that the relevant commitments and provisions in Convention 190 find expression in the Act in order to ensure both speedy resolution and an integrated approach that understands the linkages between the household and the workplace. The Convention commits parties to adopting *“an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work.”* 12.1.2 Department of Community Health, WITS School of Public HealthRegarding section 7(1)(d) – (g) it is suggested that the protection order prevents the respondent going to the complainant’s place of residence, work and study. The protection order must also protect the complainant from being exposed to the respondent outside these three settings when there is an intention of the respondent to do harm. 12.1.3 Werksmans AttorneysIt is proposed that, in light of the insertion of a definition of "spiritual abuse" in the Bill, section 7(1)*(f)* be revised to read as follows– "entering the complainant's workplace**, [or]** place of studies **or place of worship or religious practice**;".12.1.4 Centre for Child Law The insertion of section 7(5)*(c)* creates protection for children who are complainants or related persons. It is submitted that this protection should be expanded to when a matter is referred to the children’s courts to ensure continued protection of such sensitive information. It is recommended that the provisions should read:“*(c)* Where the complainant or related person is a child, the physical, home and work addresses of the complainant or related person shall not be disclosed until a children’s court inquiry into the matter has been held, where the privacy provisions under the Children’s Act 2005 will apply.”.12.1.5 MOSAIC(a) Attention is drawn to section 7(1)*(c)* which provides:“*(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. It is proposed that this provision be strengthened so as to not be superseded by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998), or any other legislation that governs evictions. The addition of the following provision is recommended:(1) A: A protection order may prohibit, suspend or restrict the exercise of the respondent’s rights to occupy the residence. For the purposes of determining who has the right to remain living within a residence, and who is obliged to vacate a residence, a protection order excluding a respondent from all or part of a residence shall take precedence over the information contained in the lease, the property deeds, or any other written agreement in respect of who has the right to inhabit the property;(1)B The terms of the protection order shall also take precedence over the provisions contained within the Protection of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act 19 of 1998) and any other legislation governing evictions.(b) It is further submitted that section 7(2)*(b)* should make specific reference to an act of domestic violence that is a criminal offence under the SAPS CAS system. This is important in a movement to disaggregate crimes and understanding the extent of domestic violence in relation to all crimes reported and investigated by the SAPS. (c) It is proposed the following as an alternative:(2)(b) which recommends to lay a criminal complaint against the person who committed the act of domestic violence (who will now be called the respondent) if the conduct of the respondent constitutes a criminal offence which will be investigated by the police. **[that the complainant approaches the relevant police station to investigate the matter with the view to the possible institution of a criminal prosecution against the respondent.]** 12.1.6 Karabo KokwaneIt is suggested that the court should be able to order that the respondent undergoes behaviour assessment and change through strategic methods and approaches, namely psychoanalytic assessment, cognitive behavioural therapy and systems of ecology.12.1.7 Social Justice CoalitionIt would be a significant step in the right direction if domestic violence itself could be criminalised, rather than being dealt with in terms of other offences.12.1.8 Active Citizens Movement With reference to 12(a)(1)(a), it is submitted that the protection order should also be considered breached if the respondent threatens to commit any act of domestic violence. Under the definition of intimidation, it is important to provide further guidance in a court ruling in indicating that single acts or threats may amount to domestic violence as conceptualised under the principle Act. Therefore, the respondent must be prohibited from threatening complainants. If the respondent does threaten the complainant, whilst the complainant is under a protection order, the respondent should be subjected to appear in court under the offense of having breached the protection order.**Recommendation** :12. 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, attempting or threatening to commit any act of domestic violence;”.12.1.10 Western Cape Government(a) In the proposed section 7(1)*(b)* replace “another person” with “third party actor”.(b) In the proposed section 7(2) an order relating to the seizure of weapons should not be discretionary. Given that so many complainants of domestic violence are killed or shot by their abusive partners, even when a protection order has been granted, this should be mandatory. An order for the seizure of weapons should be mandatory. (c) In the proposed section 7(2) replace “or” at the end of paragraph *(a)*(ii) with “and”. (d) In section 7(5)*(a)* and *(b)* add reference to place of study. (e) Provision should be made for the utilisation of intermediaries, e.g. where minors are involved. See, for example, section 170A of the Criminal Procedure Act. (f) There are instances where matters are postponed time and again by the court to the detriment of the complainant. Complainants are often of the view that their interim protection orders have lapsed due to these postponements. The public should be informed of their rights in terms of the Domestic Violence Act, and that interim orders do not lapse automatically. Measures should be put in place to ensure that matters are not postponed if a postponement is not absolutely crucial. Provision should be made for steps to be taken by complainants if courts do not adhere to the prescripts of the Act.  | (a) The Bill amends section 7(1)*(f)* to empower the court to prohibit the respondent from entering the complainant’s workplace, and COSATU welcomes this provision. If they are employed at the same workplace the respondent may be specifically prohibited from committing any act of domestic violence against the complainant at the workplace. (b) Complainants are sufficiently protected by section 7(1) from acts of domestic violence occurring at the workplace. Other aspects stated in the mentioned Convention are matters to be dealt with in the regulations. The issuing of a protection order may be extended to prohibit the respondent from committing or attempting to commit any act of domestic violence. This could be applied irrespective of the setting the complainant is in. This submission is catered for.The proposal is not supported as it is not necessary to do so since the court has the power under section 7 (1)(*h*)to prohibit the respondent from committing or attempting to commit any act of domestic violence irrespective of where the complainant is in.It is submitted that the proposed addition is not necessary as the paragraph already will has this effect.(a) Section 7(1)*(c)* is not in conflict with the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, which deals with the eviction of unlawful occupiers as defined in section 1 of that Act. Section 7(1)*(g)* already provides that the respondent may be restricted from entering or remaining in a shared residence or a part thereof. This is not an eviction as contemplate in the PIE Act. (b) To make domestic violence a criminal offence is a matter that requires extension research and consultation as there are already acts of domestic violence which constitute criminal offences and have been prosecuted as such. Criminalisation of domestic violence is a matter that does not fall within the scope of the Bill.(c) The complainant’s agency in laying a criminal charge should not be superseded by an order of court. The civil remedy provided by the DVA is aimed at providing a stopgap in matters where the victim of domestic violence does not want to engage the criminal justice system but wants the domestic violence to cease. There are a number of reasons why the complainant may not wish to lay a criminal charge.The inclusion of the DSD in the DVAB is to provide an extended pathway of services to people in a domestic relationship which has turned violent. As this is a civil remedy the court may already make an order in this regard. In particular, section 7(2) entitles the court to impose any additional conditions which are deemed reasonably necessary to protect and provide for the wellbeing of the complainant.Some of the behaviour which constitutes domestic violence or forms part of the behaviour may, if evaluated on its own does not constitute a criminal act. The DVA provides a civil remedy For this reason consideration to the criminalization of what is defined as domestic violence collectively requires further in-depth research and has not been considered in the development of this Bill.Paragraph *(j)* of the definition of domestic violence provides for behaviour of a threatening nature toward a complainant which inspires the reasonable belief that harm may be caused to the complainant. The concerns raised in the submissions are catered for.(a) The proposal is not supported as this section contemplates an act which has not taken place, whereas a third party as defined relates to a person who has already committed an act of domestic violence. (b) Certain acts of domestic violence, such as economic abuse, do not place the complainant in physical danger or at risk in respect of a firearm. Removing the discretion of the court would not be appropriate in these cases.(c) This proposal is not supported as not all acts of domestic violence constitute a crime and therefore cannot be investigated by the police. Furthermore, to do so will make the provision a closed list which is not intended in light of the use of the word “including”.(d) The proposal is supported.(e) Applications for protection orders are dealt with in chambers and the court may order that where the respondent is not represented, cross examination is made through the magistrate. Also the Criminal Matters Amendment Bill inserts section 51A in the Magistrates Courts Act, 1944 to provide for the use of intermediaries in matters other than criminal matters.(f) The directives issued in terms of section 18A intend to cater for this proposal.  |

**13. Clause 13 – Section 8: Warrant of arrest upon issuing of protection order**

|  | **Comments** | **Responses** |
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| 13.1 | 13.1**Section 8** 13.1.1 Women’s Legal Centre(a) The retention of subsection (5)*(c)* is not supported as the length of time since the alleged breach of the order is irrelevant. WLC recommends that this subsection be deleted.(b) The retention of subsection (5)*(d)* is not supported as the nature and extent of harm previously suffered should be irrelevant to the consideration of whether the complainant is suffering or may suffer harm. It is recommended that this subsection be deleted.13.1.2 MOSAICA concern is raised with regards to the reference to the “length of time” since an alleged breach of a protection order in section 8(5)*(c)*. The length of time since the breach occurred is irrelevant and presents opportunity for the use of individual discretion and ultimately failure to arrest. The full removal of the provision is proposed.**Section 8(5)*(a)***13.1.3 Social Justice CoalitionIt is recommended that the protection order be served within a stipulated timeframe after issuance. This will serve as a means of expeditiously bringing justice to all parties. The section would then read: “the original of such order must be served on the respondent within 48 hours of issuance by the court;”.Western Cape Government (a) In the proposed section 8(4)(b) add “has suffered,” before “is suffering”. (b) In the proposed section 8(5) add “has suffered,” before “is suffering”. | (a) Subsection (5)*(c)* is intended to enable a police official to decide the necessity of arrest when a lengthy time period has elapsed between the contravention of the protection order and the time that a police official is requested to execute a warrant by arresting the respondent for breach of a condition in the protection order. For example, if the breach was reported a week after it took place, a police official would be inclined to give the respondent a notice to appear before the court rather than effecting an immediate arrest. The proposal is not supported. (b) The paragraph is intended to assist a member of SAPS in making a determination as to whether it is necessary to arrest the respondent immediately or to give him or her a notice to appear before a court for breach of a protection order. The proposal is not supported.Subsection 8(5)*(c)* is intended to enable a police official to decide the necessity of arrest when a lengthy period has elapsed between the contravention of the protection order and the time that a police official is requested to execute a warrant by arresting the respondent for breach of a condition in the protection order.Given the urgency of these matters and the further harm that may occur and which is being sought to be prevented, the proposal that these orders should be served within 48 hours of issuance is supported.(a) and (b) As domestic violence may be a continuous act it is submitted that to refer to “is suffering” is sufficient. The past tense may not relate to an incident in the recent past and may have unintended consequences. |

**14. Clause 14 – Section 9: Seizure of weapons**

|  | **Comments** | **Responses** |
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| 14.1 | 14.1 **Section 9**14.1.1 Stellenbosch Law Trust Chair in JusticeIt is submitted that stronger protection is needed regarding firearm licences. A provision regulating the suspension of any firearm licence when they have been declared unfit under section 9(4) is needed. Similarly a provision explicitly barring anyone with a protection order against them from obtaining a new licence is needed.14.1.2 Western Cape Government(a) In the proposed section 9(1)*(b)* refer to the best interests of the complainant. Weapons should be seized immediately.(b) In the proposed section 9 amend subsection (2) and (4)*(b)*(ii) as section 102 of the Firearms Control Act refers to the Registrar, not the station commander. | The court dealing with domestic violence does not deal with the competency of a person to possess a firearm. The Act empowers the court to order the seizure of the firearm and then refer the matter to the National Commissioner, who will determine the competency of a person to possess a firearm in terms of the Firearms Control Act. (a) The proposal is not supported as the expression “or any other person” covers also the complainant. Paragraph *(a)* of that subsection is intended to have the weapon seized if the respondent has threatened to kill or injure himself or herself. In this regard it would be in the interest of the respondent and not of the complainant to have the weapon seized.(b) During a consultation process with SAPS, it was suggested by SAPS that to avoid having all records submitted to the Registrar (i.e. the National Commissioner), who will in any event send them to the relevant police station, a provision be made to have the records sent to the local police station. The function has been delegated to the station commander. However, due to the Firearms Control Act making reference to the Registrar in this regard, the record must also be sent to the National Commissioner.  |

**15. Clause 15 – Section 10: Variation or setting aside of protection order**

|  | **Comments** | **Responses** |
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| 15.1 | 15.1 **Section 10**Western Cape Government (a) In the proposed section 10(1)*(b)* replace “receiving the notice” with “the notice being served”.(b) In the proposed section 10(2) there is no indication that the court must first be satisfied that the complainant has received the notice / that the notice was served in instances where the respondent makes the application. (c) There is no indication that the police station must be informed and the warrant be withdrawn if the application succeeds. (d) It must be provided that the information relevant to this application should be included in the repository.  | (a) The proposal is supported. (b) The submission is supported and the provisions requiring the court to be satisfied with service will be inserted. This will align with section 6(1) and 6(1A). (c) If the order is set aside the warrant falls away. The police station would not be negatively affected if it is not informed that the order has been set aside. This would be an extra work for the clerk of the court and is unnecessary. The information would in any event be recorded on the repository.(d) Section 4(7)*(a)* provides for the capturing of “other information” as “may” be prescribed, but not documents to be captured.  |

**16. Clause 17 – Section 12: Jurisdiction**

|  | **Comments** | **Responses** |
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| 16.1 | 16.1 **Section 12**16.1.1 Legal Resources CentreIt is submitted that the Minister should consider including “any other place where the respondent may be residing at the time when service must be effected which is not ordinarily his or her residence” as it is prevalent that a respondent may evade service by moving from place to place. 16.1.2 Western Cape Government(a) In the proposed section 12(1)*(b)* add “studies”. (b) In the proposed section 12(1)*(c)* the Act does not only deal with protection orders, but also other orders – the reference to “protection” is limiting. In section 12(1)*(c)* consider deleting the reference to “protection”. (c) In the proposed section 12(1): Incorrect formatting. This should be a sandwich provision.  | The words “temporarily resides” would cover “any other place where the respondent may be residing”. The proposal is not supported.(a) The proposal is supported.(b) An application in terms of this Act relates to protection orders. The proposal is not supported.(c) The submission is not sufficient to follow. |

**17. Clause 18 – Section 13: Service of documents**

|  | **Comments** | **Responses** |
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| 17.1 | 17.1 **Section 13**17.1.1 Western Cape Government (a) In the proposed section 13(1)*(b)* see above suggestions that other sections should also refer to the service of documents (instead of, e.g. the bringing of documents to the attention of a party). In section 13(1)*(b)* ensure that all cross-references to service are captured. (b) In the proposed section 13(1)*(c)* the court must indicate what proof would suffice. | (a) This proposal is noted and supported.(b) This proposal is not supported as the definition of what may constitute proof may prove too restrictive. |

**18. Clause 19 – Section 15: Costs**

|  | **Comments** | **Responses** |
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| 18.1 | 18.1 **Section 15**18.1.1 Legal Resources Centre It is recommended that “in bad faith” also be included under section 15(1).18.1.2 Western Cape GovernmentIn the proposed section 15(2) delete “the provisions of”.  | Acting in bad faith is covered by the listed grounds.The proposal is supported. |

**19. Clause 21 – Section 17: Offences**

|  | **Comments** | **Responses** |
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| 19.1 | 19.1 **Section 17**19.1.1 Western Cape Government In the proposed section 17(3)*(a)* the fine is too low and will not act as a deterrent for big companies. Increase the amount. 19.1.2 Department of Community Health, WITS School of Public Health The substitution for section 17(3)*(a)* notes a fixed amount of R10 000. This amount may be valued differently over time, making it an unfairly low penalty in future. It is suggested the addition of a point allowing the Minister to change this amount through a *gazetted* notice from time to time.  | There is no suggestion as to what amount would be sufficient as a fine. In light of the offences in question, the proposed amount seems reasonable as it aligns with the amount of fine provided for in the Protection from Harassment Act.The proposal is supported and an amendment to empower the Minister to determine an increase to the amount, as suggested in the Bill, from time to time, in line with changes to the consumer price index, will be drafted.  |

**20. Clause 22 – Application of Act by prosecuting authority and members of South African Police Service**

|  | **Comments** | **Responses** |
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| 20.1 | 20.1 **Section 18**Western Cape Government Section 18(1) should be amended to ensure that the prosecuting authority should have valid reasons for authorising the refusal to institute a prosecution or the withdrawal of a charge – in order to ensure that corruption and favouritism does not take place.  | Any allegation of corruption or favouritism would be an abuse of power. Prosecution policy and policy directives are issued to address the manner in which these matters are dealt with. Non-compliance may result in a charge of misconduct and in serious cases dismissal. |

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

|  | **Comments** | **Responses** |
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| 21.1 | 21.1 **Section 18A** 21.1.1 Women’s Legal CentreIt is recommended that a timeframe be set within which the directives must be issued. A period of 6 months from the date of commencement of the Act is proposed.21.1.2 Legal Resources CentreWith regards to section 18A, it is suggested that a clause be included indicating that such directives must be visibly displayed at the clerk of the court’s workplace.**Section 18B**21.1.3 Sonke Gender Justice(a) The Bill must provide for budgetary allocations in order to make service delivery a reality.(b) Sonke reiterates the suggestion that directives be also issued to the Department of Cooperative Governance and Traditional Affairs to ensure that local municipalities develop their Integrated Development Plans to include responses to GBV. Local government’s role in the area of community safety is now widely advocated globally as an essential requirement of people. GBV takes place at a local level and therefore requires response and prevention efforts to be planned for and funded as part of the local government planning process.21.1.4 Qina MbokodoExtra emphasis should be placed that failure by social services to comply with their obligations under these Acts will be regarded as misconduct and must be reported to the relevant places;”.21.1.5 Legal Resources CentreInsofar as section 18B is concerned, it is recommended that a clause be included that requires an education program for children in schools on the provisions of the Act, as well as by way of presentations and discussions within the school environment.21.1.6 Western Cape Government(a) Regarding the proposed section 18B, the names of government departments change frequently. It is proposed to rather refer to the Department responsible for xxx, and the Minister responsible for yyy.(b) In the proposed section 18B(2)(a) include a reference to a child, person with disability or older person in the care of a complainant. 21.1.7 Department of Community Health, WITS School of Public HealthThe insertion of Section 18B notes directives to be gazetted by different departments on how they will promulgate the objectives of the Act. While this allows for inter-sectoral collaboration, it also allows for multiple conflicting directives with no single department coordinating and accounting for the successful implementation of these directives. This may result in confusion on how to meet the objectives of the Act.  | This proposal is covered by clause 26(1)*(a)*, which provides for the publication of the directives within 12 months of the publication of the amendment Act. Clerks will be trained on the directives, and making the directives visible is supported. (a) Each Department will deal with their budgetary requirements within their existing allocations.(b) The directives published by the identified National Department will be applicable to all, including at local government level. Disciplinary measures are covered in the directives and instructions. In serious cases it may result in a finding of misconduct and dismissal.This is matter for the directives of the Department of Basic Education.(a) The proposal is supported.(b) A child, person with disability or older person in the care of a complainant are covered under paragraph *(a)* whether they are in the care of the complainant or not. The directives and instructions are to be compiled in or after consultation with the relevant departments thereby ensuring multi-sectoral collaboration in these matters. |

**22. Clause 24 – Section 19: Regulations**

|  | **Comments** | **Responses** |
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| 22.1 | 22.1 **Section 19**22.1.1 COSATU(a) Effective and experienced legal representation for survivors of domestic violence is needed to deal with existing gender inequalities in access to justice. Perpetrators can avoid conviction because of access to resources for legal representation, which many women do not have. (b) It is of great concern that the funding for legal aid is in decline, which has left Legal Aid unable to meet its constitutional obligations. This budget pressure will be further exacerbated by budget cuts resulting from Covid-19 responses. It is critical that this issue is addressed to ensure equitable access to justice.**Section 19(1)*(b)*(ii)**22.1.2 Western Cape Government(a) In the proposed section 19(1)*(c)* provide for legal aid for disabled persons and older persons. (b) In the proposed section 19(2) incorrect indication of amendment is made as subsection (2) is duplicated.  | (a) Regulations will provide for making available legal representation at State expense.(b) Budget cuts are a reality, hence the Minister of Finance will be consulted regarding the regulations that result in expenditure for the State.(a) The submission is supported as the provision does not seem to cover these categories of people. Therefore, section 19(1)*(c)* has to be amended to read: “… Legal Aid South Africa to the complainant, respondent or a child …”. However, if they meet the criteria and means test applied by legal aid they would be provided with assistance. (b) The submission is not correct. Clause 24 of the Bill substitutes the whole section 19 and therefore subsection (2) which is copied as is from the Act as it currently stands will not be duplicated. |

**23. Clause 26 – Period within which directives and regulations must be submitted to Parliament**

|  | **Comments** | **Responses** |
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| 23.1 | 23.1 **Clause 26**Western Cape GovernmentRegarding clause 26, it is submitted that consideration be given to moving the clause to the principal Act as section 18C, and state that the directives must be submitted within 12 months from the commencement of sections 18A and 18B respectively. | The proposal is accepted and an amendment will be drafted.  |

**24. Clause 27 – Short title and commencement**

|  | **Comments** | **Responses** |
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| 24 | 24 **Clause 27**Western Cape GovernmentClause 26(1)(a): delete the reference to section 81. | This is supported. |

**25. Schedule**

|  | **Comments** | **Responses** |
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| 25. | 25.1 **Schedule**Western Cape Government (a) Regarding the proposed amendment of section 40(1)*(q)* of the Criminal Procedure Act, 1977, replace “of having” with “to have”. (b) In item 7(3) of Schedule 2 to the Firearms Control Act, the reference is too wide - there are many different offences in the Domestic Violence Act, e.g. regarding the non-reporting by a functionary, or offences by persons employed by electronic communications service providers. These individuals should not be declared unfit to possess a firearm as a result of the offence ito the Domestic Violence Act. Proposed item 7(3) of Schedule 2 to the Firearms Control Act: add references to the specific sections dealing with offences that should lead to an unfitness enquiry, instead of simply referring to the Domestic Violence Act.  | (a) The proposal is supported.(b) It is not intended that all offences under the Act will be referred for determination of unfitness to possess a firearm. However, it may be necessary to consider amending section 9(4)*(a)* to provide for the court to direct the clerk of the court to inform the police when a final protection order has been issued. |