REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS TO**

**DOMESTIC VIOLENCE ACT AMENDMENT BILL**

**[B 20B—2020]**

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*(As agreed to by the Portfolio Committee on Justice and Correctional Services (National Assembly))*

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**[B 20C—2020]**

**AMENDMENTS AGREED TO**

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DOMESTIC VIOLENCE ACT AMENDMENT BILL

[B 20B—2020]

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**CLAUSE 1**

1. On page 3, after line 16, to insert the following:

“19A. Period within which directives and regulations must be submitted to Parliament”.

**CLAUSE 2**

1. On page 3, in lines 31 and 32, to delete “prescribed in terms of section 6A” and to replace with the following:

“provided for in the directives contemplated in section 6A(3)*(i)*”.

2. On page 3, after line 40, to insert the following:

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

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

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

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

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

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

may consider as a close relationship of a person with the complainant;”.

3. On page 3, in line 42, to delete “he or she has” and to replace with “they have”.

4. On page 3, in line 43, to delete “he or she has” and to replace with “they have”.

5. On page 3, in line 53, to delete “is aimed at” and to replace with “has the effect of”.

6. On page 3, in line 55, to delete “him or her” and to replace with “them”.

7. On page 4, in line 1, to delete “his or her” and to replace with “their”.

8. On page 4, in line 2, to delete “him or her” and to replace with “them”.

9. On page 4, in line 4, to delete “his or her” and to replace with “their”.

10. On page 5, in line 43, to delete “**communications’**” and to replace it with “**communication’**”

11. On page 5, in line 45, after “pictures” to insert “that are real, simulated or manipulated,”.

12. On page 5 in line 50, to delete “communications” and replace it with “communication.”.

13. On page 5 in line 55, to delete “**communication**” and replace with “**communications**”

14. On page 5 in line 57, to delete the first “communications” and replace it with “communication.”.

15. On page 6, in line 6, to delete “(ii)” and to replace with “(ii)”.

16. On page 6, in line 7, to delete “(iii)” and to replace with “(iii)”.

17. On page 6, in line 8, to delete “(iv)” and replace with “(iv)”.

18. On page 6, in line 9, to delete “**[*(e)*]**”.

19. On page 6, in line 9, to underline “education expenses; or”.

20. On page 6, in line 9, to delete “or”.

21. On page 6, after line 9, to insert “(vi) transportation costs; or”.

22. On page 6, in line 10, to delete “**[*(f)*]**”.

23. On page 6, in line 10, to delete “(vi)” and to replace with “(vii)”.

24. On page 6, in line 12, after “child” to insert “, person with a disability or older person”.

25. On page 6, in line 12, after “complainant,” to insert “to whom the respondent has a duty of care”.

26. On page 6, in line 22, to delete “**[is such as to]**” and to replace with “**[is such as to constitute]**”.

27. On page 6, in line 22, to delete “constitutes” and replace with “constitutes”.

28. On page 6, in line 30, to delete “against” and to replace with “without”.

29. On page 6, in line 30, to delete “wishes” and to replace with “consent”.

30. On page 6, in line 38 to 45, to delete the entire definition of functionary and replace with

“ **‘functionary’** means―

(*a*) a medical practitioner, health care personnel, a social worker, an official in the employ of a public health establishment, an educator or a care giver; and

(*b*) any other person designated in terms of section 2A(1).”

31. On page 6, in line 49, after “watching,” to insert “stalking,”.

32. On page 6, in line 54, to delete “he or she” and to replace with “they”.

33. On page 7, in line 6, “communications” and replace with “communication”.

34. On page 7, in line 7, “communications;” and replace with “communication;”.

35. On page 7, in line 21, to delete “he or she” and to replace with “they”.

36. On page 7, in line 31, to delete “he or she” and to replace with “they”.

37. On page 7, in lines 36 and 37, to delete “by the Director-General: Health” and to replace with “as a functionary”.

38. On page 7, in line 38, after “section 18B” to delete “, as a functionary”.

39. On page 7, in line 47, to delete “or”.

40. On page 7, in line 49, to delete “so,” and to replace with “so; or”.

41. On page 7, after line 49, to insert the following:

“*(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,”.

42. On page 7, in line 51, to delete “he or she has” and to replace with “they have”.

43. On page 7, in line 52, to delete “he or she has” and to replace with “they have”.

44. On page 8, from line 8, to delete “**‘person**” up to and including “complainant;” in line 17.

45. On page 8, in line 33, to delete “permission” and to replace with “consent”.

46. On page 8, in line 50, to delete “as abuse”.

47. On page 9, in line 18, to delete “he or she complies” and to replace with “they comply”.

48. On page 9, in line 23, to underline “No.”.

49. On page 9, in line 29, to delete “his or her” and to replace with “their”.

50. On page 9, in line 32, to delete “his or her” and to replace with “their”.

51. On page 9, in line 34, to delete “his or her” and to replace with “their”.

52. On page 9, in line 60, after “act” to insert “which”.

53. On page 10, in line 2, before “protection” to insert “a”.

54. On page 10, in line 3, after “paragraph *(a)*” to insert “against a third party actor”.

55. On page 10, in line 6, to delete “to have” and to replace with “having”.

**NEW CLAUSE**

1. That the following be a new clause:

“**Amendment of section 2 of Act 116 of 1998**

**3.** Section 2 of the principal Act, is hereby amended by the substitution for subparagraph (*c*) of the following subparagraph:

“(*c*) If it is reasonably possible to do so, explain to the complainant the content of such notice in the prescribed manner, including the remedies at **[his or her]** their disposal in terms of this Act and the right to lodge a criminal complaint, if applicable.”.

**CLAUSE 3**

1. On page 10, in line 11, after “**2A.**” to insert the following:

“(1) The Minister may, by notice in the *Gazette*, designate any other person—

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

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

as a functionary.”.

2. On page 10, in line 11, to delete “(1)” and to replace with “(2)”.

3. On page 10, in lines 11 to 12, to delete “his or her” and to replace with “their”.

4. On page 10, in line 12, after “exercise of”, to delete “his or her” and to replace with “their”.

5. On page 10, in line 13, to delete “him or her, causes him or her” and to replace with “them, cause them”.

6. On page 10, in line 22, to delete “prescribed in terms of” and to replace with “contemplated in”.

7. On page 10, in line 26, to delete “prescribed” and to replace with “contemplated”.

8. On page 10, in line 27 to delete “(2)” at the beginning of the line and to replace with “(3)”.

9. On page 10, in line 27, to delete “(1)” at the end of the line and replace with “(2)”.

10. On page 10, in line 28, to delete “(1)*(a)*” and to replace with “(2)*(a)*”.

11. On page 10, in line 32, to delete “his or her” and to replace with “their”.

12. On page 10, in line 36, to delete “2A(1)” and to replace with “2A(2)”.

**CLAUSE 4**

1. On page 11, in line 12, to delete “he or she” and to replace with “they”.

2. On page 11, in line 13, to delete “believes” and to replace with “believe”.

3. On page 11, in line 34, to delete “may be prescribed in terms of” and to replace with “contemplated in”.

**CLAUSE 5**

1. On page 11, in line 48, to delete “him or her” and to replace with “them”.

**CLAUSE 6**

1. On page 12, in line 24, to delete “another” and to replace with “a functionary or another”.

2. On page 12, in line 38, to delete “, who is under the age of 16 years,”.

3. On page 12, in line 39, to delete “the child” and to replace with “that child”.

4. On page 12, in line 55, after “subsection (1)*(b)*” to insert “, any supporting affidavit”.

5. On page 12, in line 58, after “must” to insert “immediately”.

**CLAUSE 7**

1. On page 13, in lines 38 to 39, to delete “within the area of jurisdiction of the court” and to replace with “servicing the area where the complainant resides”.

2. On page 13, in line 45, to delete “complainant” and to replace with “complainant’s”.

3. On page 14, in line 19; to delete “Director-Geneal” and to replace it with “Director-General”.

**CLAUSE 8**

1. On page 14, in line 29, to delete “4(1)*(b)*(ii) or (7)” and to replace with “4(1)*(b)* **[(7)]**”.

2. On page 14, from “**[and]**” in line 36, up and including **“out]**” in line 40, to delete all the words and to replace with the following:

“**[and where a Family Advocate is available, a court may, in the circumstances as may be prescribed in the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), when considering an application contemplated in subsection (1), cause an investigation to be carried out]**“.

3. On page 14, in line 41, after “1987” to insert “(Act No. 24 of 1987)”.

4. On page 15, in line 25, after “protection” to insert “order”.

5. On page 15, in line 39, after “order” to insert “and of the return date”.

6. On page 15, in line 53, to delete “brought to the attention of” and to replace it with “served on”.

**CLAUSE 9**

1. On page 17, in line 10, to delete “questions” and to replace with “question”.

2. On page 17, in line 61, after the second “to” to insert “immediately”.

3. On page 18, in line 4, to delete “form and manner,” and to replace with the following:

“manner by means of an affidavit in the prescribed form”.

4. On page 19, in lines 4 to 5, after “resources” to delete “, in the prescribed manner”.

5. On page 19, in line 8, after “service” to insert “provider”.

6. On page 19, in line 18, to delete “(6)*(c)*” and to replace with “(6)*(a)*”.

7. On page 19, in line 46, to delete the words “it may”.

**CLAUSE 10**

1. On page 20, in line 2, to delete “**[or is committing]**” and to replace with “or is committing”.

2. On page 20, in line 29, from “(2A)” up to and including “date” in line 34, to delete all the words and to replace with the following:

“(2A) *(a)* If the respondent appears but the complainant does not appear, or where both the respondent and the complainant do not appear, on the return date referred to in section 5(3), the court must extend the interim protection order and the return date, and the clerk of the court must notify—

(i) the complainant; or

(ii) the complainant and the respondent, where both did not appear,

in the prescribed form and manner of the extended date.”.

3. On page 21, in line 5, after “respondent” to insert “within 48 hours or as soon as reasonably possible”.

4. On page 21, in line 26, to delete “brought to the attention of” and to replace it with “served on”.

**CLAUSE 11**

1. On page 21, in line 34, to delete the comma after “must”.

2. On page 21, in line 38, to delete “his or her” and to replace it with “their”.

3. On page 21, in line 50, to delete “him or her” and to replace with “them”.

4. On page 21, in line 56, to delete “prescribe” and to replace with “provide for”.

**CLAUSE 12**

1. On page 23, in line 16, to delete “he or she” and to replace with “they”.

2. On page 23, in line 27, after “home” to insert “, study”.

3. On page 23, in line 32, after “home” to insert “, study”.

**CLAUSE 13**

1. On page 24, in line 3 to delete “and”.

2. On page 24, in line 42, to delete “.”.” at the end of the line and to replace it with “; and”.

2. On page 24, after line 42, to insert the following:

“*(c)* by the insertion after subsection (5) of the following subsection:

“(6) Whenever a warrant of arrest is handed to a member of the South African Police Service in terms of subsection (4)*(a)*, the member must inform the complainant of **[his or her]** their right to simultaneously lay a charge against the respondent, if applicable, and explain to the complainant how to lay such a charge.”.”

**CLAUSE 14**

1. On page 24, in line 54, to delete “himself or herself, **[or]**” and to replace with “**[himself or herself, or]** themselves,”.

2. On page 25, in line 45, to delete “**[.]**; and” and to replace with “; and”.

**CLAUSE 15**

1. On page 25, in line 55, to delete “he or she opposes” and to replace with “they oppose”.

2. On page 25, in line 56, to delete “receiving”.

3. On page 25, in line 56, after “*(a)*” to insert “being served”.

4. On page 25, in line 59, from “(2)’ to delete everything up to and including “voluntarily.”.

5. On page 26, in line 2, and to replace with the following:

“(2) If the court is satisfied that—

*(a)* circumstances have changed materially since the granting of the original protection order;

*(b)* **[and that]** good cause has been shown for the variation or setting aside of the protection order; and

*(c)* proper service has been effected on the respondent,

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

**CLAUSE 17**

1. On page 26, in line 20, after “resides,” to insert “studies,”.

**CLAUSE 19**

1. On page 26, in line 49, to delete “the provisions of”.

2. On page 27, in line 1, to delete “communications” and to replace with “communication”.

**CLAUSE 23**

1. On page 28, in lines 54 to 56, to delete all the words from “in” up to and including “; and” and to replace with the following:

“in consultation with the Cabinet members responsible for health, social development, basic education, higher education, science and innovation, police and communications and digital technologies; and”.

2. On page 29, in line 9, after “must” to insert “provide for”.

3. On page 29, in line 10, to delete “prescribe”.

4. On page 29, in line 12, to delete “prescribe”.

5. On page 29, in line 16, to delete “prescribe”.

6. On page 29, in line 18, to delete “prescribe”.

7. On page 29, in line 22, to delete “provide for”.

8. On page 29, in line 28, to delete “provide for”.

9. On page 29, in line 29, to delete “prescribe”.

10. On page 29, in line 31, to delete “prescribe”.

11. On page 29, after line 33, to insert the following:

“(3) The directives referred to in this section must ensure that adequate disciplinary steps are taken against a functionary or person who fails to comply with any directive.”.

12. On page 29, in line 34, to delete “(3)” and to replace with “(4)”.

**CLAUSE 24**

1. On page 30, in line 2, after the first “to” to insert “the complainant, respondent, a person with a disability, an older person or”.

2. On page 30, in lines 2 to 3, to delete “him or her” and to replace with “them”.

3. On page 30, after line 15, to insert the following:

“**Insertion of new section in Act 116 of 1998**

**25.** The following section is hereby inserted after section 19 of the principal Act:

"**Period within which directives and regulations must be submitted to Parliament**

**19A.** (1) *(a)* The directives referred to in sections 18A and 18B must be submitted to Parliament within 12 months from the date of assent of the Domestic Violence Amendment Act, 2021.

*(b)* A Director-General who is in terms of section 18A or 18B, responsible for the issuing of directives must, in the event of a failure to submit the directives to Parliament, within 12 months from the date of assent of the Domestic Violence Amendment Act, 2021, report such failure and the reasons for such failure to Parliament before the end of the month following upon the month during which the 12-month period expires and thereafter at such intervals as Parliament may determine.

*(c)* The failure to submit the directives referred to in paragraph *(a)* to Parliament within 12 months from the date of assent of the Domestic Violence Amendment Act, 2021, does not affect the validity of any such directives that are submitted to Parliament after the expiration of the said period and thereafter issued.

(2) *(a)* The Minister must, in terms of section 19(2) submit regulations that are necessary or required to be made for the proper implementation and administration of this Act to Parliament within 12 months from the date of assent of the Domestic Violence Amendment Act, 2021.

*(b)* The Minister must, in the event of a failure to submit the regulations referred to in paragraph *(a)* to Parliament, within 12 months from the date of assent of the Domestic Violence Amendment Act, 2021, report such failure and the reasons for such failure to Parliament before the end of the month following upon the month during which the 12-month period expires and thereafter at such intervals as Parliament may determine.

*(c)* The failure to submit the regulations referred to in paragraph *(a)* to Parliament within 12 months from the date of assent of the Domestic Violence Amendment Act, 2021, does not affect the validity of any such regulations that are submitted to Parliament after the expiration of the said period and made thereafter.".

**CLAUSE 25**

1. On page 30, in line 17, to delete “**25.**” and to replace with “**26.**”.

**CLAUSE 26**

1. On page 30, from lines 21 to 49, to delete all the words from “**Period**”, in line 21, up to and including “thereafter.” in line 49.

**CLAUSE 27**

1. On page 30, in line 51, to delete “Domestic Violence Act Amendment Act, 2021” and to replace with “Domestic Violence Amendment Act, 2021,”.

2. On page 30, in line 54, to delete “26” and to replace with “19A”.

3. On page 30, in lines 54 and 55, to delete “in terms of section 81 of the Constitution of the Republic of South Africa”.

**SCHEDULE**

1. On page 31, from line 4, to omit the row amending ‘‘Act No. 51 of 1977’’ and to substitute:

|  |  |  |
| --- | --- | --- |
| "Act No. 51 of 1977 | Criminal  Procedure Act,  1977 | Section 40 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for paragraph *(q)* of the following paragraph:  "*(q)* who isreasonably suspected of having committed an act of domestic violence, as contemplated in section 1 of the Domestic Violence Act, 1998 and which constitutes an offence in **[respect of which violence is an element]** terms of any law.". |