

**GENERAL NOTICE
NOTICE OF 2009
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
PUBLICATION OF THE PROTECTION FROM HARASSMENT BILL**

The Minister of Justice and Constitutional Development invites interested parties to submit any comments they might have on the Protection from Harassment Bill set out below. Any person wishing to comment on the Bill is invited to submit written comments to the Minister of Justice and Constitutional Development on or before **15 June 2009**. Comments should be directed for the attention of S J Robbertse and -

- (a) if forwarded by post, be addressed to:
**The Department of Justice and Constitutional Development
Private Bag X81
PRETORIA
0001**
- (b) if delivered by hand, be delivered at -
**Momentum Building
329 Pretorius Street
PRETORIA**
- (c) if sent by E-mail, be sent to **srobbertse@justice.gov.za**
- (d) if faxed, be faxed to **086 648 3326**

By way of background, the following:

The Bill emanates from an investigation by the South African Law Reform Commission (SALRC) into stalking behaviour. The SALRC report on the matter contains legislative proposals (Project 130). According to the SALRC, the existing civil law framework, namely an interdict, and criminal law framework, namely the punishing of stalking conduct as a crime or the prohibition thereof by means of a binding over of a person to keep the peace in terms of section 384 of the Criminal Procedure Act, 1995 (Act No. 56 of 1955), may not provide adequate recourse to victims of stalking who are not in a domestic relationship. The SALRC is therefore of the opinion that legislation should be enacted to specifically cater for a civil remedy against stalking. The Bill proposed by the SALRC primarily aims to address this type of behaviour by means of an order of court, in terms of which the harasser is prohibited from continuing with the harassing conduct, a contravention of which is punishable as a crime.

The Bill proposed by the SALRC has been adapted to bring it in line with prevailing drafting norms and standards. Besides these technical amendments, a number of substantive changes are proposed. They are dealt with below:

- (i) Clause 1(2) makes it clear that although a complainant can seek relief for harassment or stalking in terms of the Domestic Violence Act, 1998, nothing prevents such a person from applying for protection from harassment in terms of this Bill.
- (ii) Clauses 3(3)(a) and (4) and 6(5) require a court, when issuing a protection order, to identify a person who is to serve the order on the respondent and to direct that person to act accordingly. Non-compliance can result in the person being convicted of contempt of court, as provided for in clause 15(2). The reason for this approach is to address the very real challenge which is experienced in the application of the Domestic Violence Act, 1998, where protection orders issued under that Act very often do not reach the respondents, thereby contributing largely to that Act being rendered almost ineffective at times.

(iii) Clause 4 inserts provisions which will create a mechanism in terms of which witnesses can be subpoenaed to attend court proceedings. Since there is also no such provision in the Domestic Violence Act, 1998, the Schedule to the Bill proposes a similar insertion in that Act.

(iv) Clause 5 inserts provisions which give the court a discretion to hold proceedings *in camera* should this be necessary. The Domestic Violence Act, 1998, requires all proceedings in terms of that Act to be held *in camera* because it deals with parties who are in domestic relationships. As already indicated, the Bill is intended primarily to deal with parties who are not necessarily in domestic relationships and the universally accepted principle of open court proceedings should apply, unless the court directs otherwise in the interests of the administration of justice.

(v) The SALRC Bill contains a provision in terms of which the court is given the power to order that a respondent be assessed and, if necessary, be subjected to psychiatric or psychological treatment or rehabilitation as the court deems fit, at State expense. This provision has been deleted because of the financial implications it has for the State. Neither the Domestic Violence Act, 1998, nor the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, contains such a provision.

(vi) Clause 7(2) allows a court, in addition to the conditions that it can impose under clause 7(2)(a) and (b), to direct that a stalking matter be investigated by the South African Police Service with the view to the possible institution of a criminal prosecution.

(vii) Amendments are proposed to section 384 of the Criminal Procedure Act, 1955 (the predecessor of the current Criminal Procedure Act, 1977). Only a few provisions of this 1955 Act are still in force, among others, section 384 which deals with binding over of persons to keep the peace. There were comments during the investigation of the SALRC on stalking regarding this provision, among others, that it might be expedient to enhance its efficacy by means of a few minor amendments. The intention is to elicit comments on the amendments proposed by the Department to this provision which are contained in the Schedule to the Bill.

Besides comments on the Bill suggested by the SALRC, specific comments on the issues identified in paragraphs (i) to (vii) above would also be appreciated.

Copy of SALRC Bill(2)

REPUBLIC OF SOUTH AFRICA

PROTECTION FROM HARASSMENT B I L L

*(As approved and recommended by the South African Law Reform Commission
and adapted by the Department of Justice and Constitutional Development)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B—2009]

BILL

To provide for the issuing of protection orders against harassment; to amend the Criminal Procedure Act, 1955, so as to provide for an increase of the amount which may be fixed by a magistrate in respect of a recognisance as security to keep the peace; to effect consequential amendments to the Criminal Procedure Act, 1977; to amend the Domestic Violence Act, 1998, so as to provide a mechanism to subpoena witnesses to attend proceedings in terms of that Act; to effect consequential amendments to the Firearms Control Act, 2000; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the rights of all people in the Republic of South Africa, including the right to equality, the right to privacy, the right to dignity, the right to freedom and security of the person which incorporates the right to be free from all forms of violence from either public or private sources, and the rights of children to have their best interests considered to be of paramount importance;

IT IS THE PURPOSE of this Act to afford victims of harassing behaviour an effective remedy in terms of civil law and to introduce measures which seek to enable the relevant organs of state to give full effect to the provisions of this Act.

BE IT ENACTED, by the Parliament of the Republic of South Africa, as follows:—

Definitions

- 1.** (1) In this Act, unless the context indicates otherwise—
- (i) “**arm**” means any firearm or any handgun or airgun or ammunition as defined in section 1(1) of the Firearms Control Act, 2000 (Act No. 60 of 2000);
 - (ii) “**child**” means a person under the age of 18 years;
 - (iii) “**clerk of the court**” means a clerk of the court appointed in terms of section 13 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), and includes an assistant clerk of the court so appointed;
 - (iv) “**complainant**” means any person who alleges he or she is being subjected to harassment;
 - (v) “**court**” means any court referred to in the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);
 - (vi) “**dangerous weapon**” means any weapon as defined in section 1 of the Dangerous Weapons Act, 1968 (Act No. 71 of 1968);
 - (vii) “**harm**” means mental, psychological or physical harm or damage to property;
 - (viii) “**harassment**” means directly or indirectly engaging in conduct that causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably —
 - (a) 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;

- (b) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
- (c) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving it where it will be found by, given to or brought to the attention of, the complainant or a related person;
- (ix) “**member of the South African Police Service**” means any member as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);
- (x) “**peace officer**” means a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (xi) “**prescribe**” means prescribe in terms of a regulation made under section 16 of this Act;
- (xii) “**related person**” means any member of the family or household of a complainant, or any other person in close relationship to such complainant;
- (xiii) “**respondent**” means any person against whom proceedings are instituted in terms of this Act;
- (xiv) “**sheriff**” means a sheriff appointed in terms of section 2(1) of the Sheriffs Act, 1986 (Act No. 90 of 1986), or an acting sheriff appointed in terms of section 5(1) of that Act; and
- (xv) “**this Act**” includes the regulations.

(2) Nothing in this Act precludes a person who may apply for relief against harassment or stalking in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), from applying for relief in terms of this Act.

Application for protection order

2. (1) A complainant may in the prescribed manner apply to the court for a protection order against harassment.

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

- (a) the relief available in terms of this Act; and
- (b) the right to also lodge a criminal complaint against the respondent of *crimen injuria*, assault, trespass, extortion or any other offence which has a bearing on the *persona* or property of the complainant or related person.

(3) (a) Notwithstanding the provisions of any other law, the application for a protection order may, subject to paragraph (b), be brought on behalf of the complainant by another person who has a material interest in the well-being of the complainant or related person.

(b) An application referred to in paragraph (a) must be brought with the written consent of the complainant, except in circumstances where the complainant is a person who, in the opinion of the court, is unable to do so.

(4) Notwithstanding the provisions of any other law, any child, or person on behalf of a child, may apply to the court for a protection order without the assistance of a parent, guardian or any other person.

(5) The application referred to in subsection (1) may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied that the complainant or related person is suffering or may suffer harm if the application is not dealt with immediately.

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

(7) The application and affidavits must be lodged with the clerk of the court who must immediately submit the application and affidavits to the court.

Consideration of application and issuing of interim protection order

3. (1) The court must as soon as is reasonably possible consider an application submitted to it in terms of section 2(7) and may, for that purpose, consider any additional evidence as it deems fit, including oral evidence or evidence by affidavit, which must form part of the record of proceedings.

(2) If the court is satisfied that there is *prima facie* evidence that—

- (a) the respondent is engaging, or has engaged in harassment;
- (b) harm is being or may be suffered by the complainant or related person as a result of that conduct if a protection order is not issued immediately; and
- (c) the protection to be accorded by the interim order is likely not to be achieved if prior notice of the application is given to the respondent,

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

(3) (a) Upon the issuing of an interim protection order the court must direct that the interim protection order be served on the respondent in the prescribed manner by the clerk of the court, sheriff or peace officer identified by the court.

(b) A copy of the application referred to in section 2(1) and the record of any evidence noted in terms of subsection (1) must be served on the respondent together with the interim protection order.

(c) The interim protection order referred to in paragraph (a) must call upon the respondent to show cause on the return date mentioned in the order why a final protection order should not be issued against the respondent.

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

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

(6) An interim protection order has no force and effect until it has been served on the respondent.

(7) Upon service or upon receipt of a return of service of an interim protection order, the clerk of the court must immediately cause—

- (a) a certified copy of the interim protection order; and
- (b) the original warrant of arrest referred to in section 8(1)(a), to be served on the complainant.

Attendance of witnesses

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

(2) A witness who is subpoenaed as provided for in subsection (1), must attend the proceedings and remain in attendance at the proceedings, and a person who is in attendance at any proceedings under this Act, though not subpoenaed as a witness, and who is warned by the court to remain in attendance at the proceedings, must remain in attendance at the proceedings, unless he or she is excused by the court.

(3) Any person who is subpoenaed to attend proceedings as provided for in subsection (1) and who fails to attend or to remain in attendance and any person who is warned by the court to remain in attendance at those proceedings and who fails to remain in attendance, and any person so subpoenaed or so warned who fails to appear at the place and on the date and at the time to which the proceedings in question may be adjourned or who fails to remain in attendance at those proceedings as so adjourned, is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding three months.

Circumstances in which proceedings may not take place in open court and publication of information

5. (1) The court may, of its own accord or at the request of the complainant or related person, if it is of the opinion that it would be in the interests of the administration of justice that the proceedings in question be held behind closed doors, direct that—

- (a) the public or any class thereof may not be present at those proceedings or any part thereof;
- (b) the identity or address of any person may not be revealed; or
- (c) no information relating to the proceedings be published in any manner whatsoever.

(2) Where a witness in proceedings under this Act is a child, the court may direct that no person, other than the witness and his or her parent or guardian or a person *in loco parentis*, may be present at the proceedings, unless that person's presence is necessary in connection with the proceedings or is authorised by the court to be present.

(3) Nothing in this section limits any other power of the court to hear proceedings *in camera* or to exclude any person from attending those proceedings.

Issuing of final protection order

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

- (a) proper service has been effected on the respondent; and
- (b) the application contains *prima facie* evidence that the respondent has engaged or is engaging in harassment,

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

(2) If the respondent appears on the return date in order to oppose the issuing of a final protection order, the court must proceed to hear the matter and—

- (a) consider any evidence previously received in terms of section 3(1); and
- (b) consider any further affidavits or oral evidence as it may direct, which must form part of the record of proceedings.

(3) The court may, of its own accord or on the request of the complainant or related person, if it is of the opinion that it is required in the case of a witness who could be exposed to undue mental stress or suffering, order that in the examination of those witnesses, including the complainant or related person, a respondent who is not represented by a legal representative—

- (a) is not entitled to cross-examine directly a person whom he or she is alleged to have harassed; and
- (b) must put any question to the person by stating the question to the court, and the court is to repeat the question accurately to the person.

(4) The court must, after a hearing as provided for in subsection (2), issue a final protection order in the prescribed form if it finds, on a balance of probabilities, that the respondent has engaged or is engaging in harassment.

(5) Upon the issuing of a final protection order the court must direct that—

- (a) the original of that order must be served on the respondent; and
 - (b) a certified copy of that order, and the original warrant of arrest referred to in section 8(1)(a), must be served on the complainant,
- by the clerk of the court, sheriff or peace officer identified by the court.

(6) The clerk of the court must immediately, in the prescribed manner, forward certified copies of any final protection order and of the warrant of arrest referred to in section 8(1)(a) to the police station of the complainant's choice.

(7) Subject to the provisions of section 7(4), a final protection order issued in terms of this section remains in force until it is set aside, and the execution of that order is not automatically suspended upon the noting of an appeal.

Court's powers in respect of protection order

7. (1) The court may, by means of a protection order referred to in sections 3 and 6 prohibit the respondent from—

- (a) engaging in or attempting to engage in harassment;
- (b) enlisting the help of another person to engage in harassment; or
- (c) committing any other act as specified in the protection order.

(2) The court may impose any additional conditions as it deems reasonably necessary to protect and provide for the safety or well-being of the complainant or related person, including an order—

- (a) to seize any arm or dangerous weapon in the possession or under the control of the respondent as provided for in section 9;
- (b) that a peace officer must accompany the complainant or related person to a specified place to assist with arrangements regarding the collection of personal property; or
- (c) directed to the station commissioner of the relevant police station that the matter be investigated with the view to the possible institution of a criminal prosecution against the respondent and to report back to the court in writing on the outcome of the investigation.

(3) (a) The physical, home and work address of the complainant or related person must be omitted from the protection order, unless the nature of the terms of the order necessitates the inclusion of the address.

(b) The court may issue any directions to ensure that the complainant's or related person's physical address is not disclosed in any manner which may endanger the safety or well-being of the complainant or related person.

(4) (a) Provided that the complainant is not in possession of or not in the process of applying for a protection order against harassment or stalking as provided for in the Domestic Violence Act, 1998 (Act No. 116 of 1998), the court may not refuse —

- (i) to issue a protection order; or
 - (ii) to impose any condition or make any order,
- which it is competent to impose or make under this section, merely on the grounds that other legal remedies are available to the complainant.

(b) If the court is of the opinion that any provision of a protection order deals with a matter that should, in the interests of justice, be dealt with further in terms of any other relevant law, the court must order that that provision remain in force for the limited period as the court determines, in order to afford the party concerned the opportunity to seek appropriate relief in terms of that law.

Warrant of arrest upon issuing of protection order

8. (1) Whenever a court issues a protection order, the court must make an order—

- (a) authorising the issue of a warrant for the arrest of the respondent, in the prescribed form; and
- (b) suspending the execution of that warrant subject to compliance with any prohibition, condition, obligation or order imposed in terms of section 7.

(2) The warrant referred to in subsection (1)(a) remains in force unless the protection order is set aside, or it is cancelled after execution.

(3) The court may issue the complainant with a second or further warrant of arrest, if the complainant files an affidavit in the prescribed form in which it is stated that the warrant is required for her or his protection and that the existing warrant of arrest has been—

- (a) executed and cancelled; or
- (b) lost or destroyed.

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

(b) If it appears to the member concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant or related person is suffering or may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the member must immediately arrest the respondent for allegedly committing the offence referred to in section 15(1)(a).

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

- (i) specifies the name, the residential and work address and the occupation or status of the respondent;
- (ii) calls upon the respondent to appear before a court on the date and at the time specified in the notice, on a charge of committing the offence referred to in section 15(1)(a); and

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

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

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

- (a) the risk to the safety or well-being of the complainant or related person;
- (b) the seriousness of the conduct comprising an alleged breach of the protection order; and
- (c) the length of time since the alleged breach occurred.

(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 right simultaneously to lay a criminal charge against the respondent, if applicable, and explain to the complainant how to lay such a charge.

Seizure of arms and dangerous weapons

9. The court may order a member of the South African Police Service to seize any arm or dangerous weapon in the possession or under the control of a respondent and direct the clerk of the court to refer a copy of the record of the evidence concerned to the National Commissioner of the South African Police Service for consideration in terms of the Firearms Control Act, 2000 (Act No. 60 of 2000).

Variation or setting aside of protection order

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

(2) If the court is satisfied that circumstances have materially changed since the granting of the original protection order and that good cause has been shown for the variation or setting aside of the protection order, it may issue an order to this effect: Provided that the court may not grant such an application to the complainant unless it is satisfied that the application is made freely and voluntarily.

(3) The clerk of the court must forward a notice as prescribed to the complainant and the respondent if the protection order is varied or set aside as provided for in subsection (1).

Jurisdiction

11. (1) Any court within the area in which—

- (a) the complainant permanently or temporarily resides, carries on business or is employed;
- (b) the respondent permanently or temporarily resides, carries on business or is employed; or
- (c) the cause of action arose,

has jurisdiction to issue a protection order as provided for in this Act.

- (1)(a). (2) No specific minimum period is required in relation to subsection (2); or
- (3) A protection order is enforceable throughout the Republic.

Service of documents

12. Service of any document in terms of this Act must be effected immediately in the prescribed manner by the clerk of the court, the sheriff or a peace officer—

- (a) as directed by the court in terms of section 3(3)(a) or (4) or section 6(5); or
- (b) as decided by the clerk of the court in terms of section 3(7).

Costs

13. The court may only make an order as to costs against any party if it is satisfied that the party in question has acted frivolously, vexatiously or unreasonably.

Appeal and review

14. The provisions in respect of appeal and review as provided for in the Magistrate's Courts Act, 1944 (Act No. 32 of 1944), and the Supreme Court Act, 1959 (Act No. 59 of 1959), apply to any proceedings in terms of this Act.

Offences

- 15.** (1) Notwithstanding the provisions of any other law, any person who—
- (a) contravenes any prohibition, condition, obligation or order imposed in terms of section 7; or
- (b) in an affidavit referred to in section 8(4)(a), willfully makes a false statement in a material respect,

is guilty of an offence and liable on conviction in the case of an offence referred to in paragraph (a), to a fine or imprisonment for a period not exceeding five years, and in the case of an offence referred to in paragraph (b), to a fine or imprisonment for a period not exceeding two years.

(2) Any person who willfully disobeys a direction given by the court as provided for in sections 3(3)(a) or (4) or 6(5) is guilty of contempt of court and is, on conviction, liable to a fine or to imprisonment for a period not exceeding six months.

(3) Any person who reveals the identity or address of any person in contravention of section 5(1)(b) or who publishes any information in contravention of section 5(1)(c), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years

Regulations

16. (1) The Cabinet member responsible for the administration of justice may make regulations regarding—

- (a) any form required to be prescribed in terms of this Act;
- (b) any matter required to be prescribed in terms of this Act; and
- (c) any other matter which the Cabinet member deems necessary or expedient to be prescribed in order to achieve the objects of this Act.

- (2) Any regulation made under subsection (1)—
- (a) must be submitted to Parliament prior to publication thereof in the *Gazette*;
 - (b) which may result in expenditure for the State, must be made in consultation with the Minister of Finance; and
 - (c) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding one year.

Policy Directives

17. (1) (a) The National Director of Public Prosecutions referred to in section 10 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), in consultation with the Cabinet member responsible for the administration of justice and after consultation with the Directors of Public Prosecutions referred to in section 13 of that Act, must issue directives regarding the institution of prosecutions in respect of any offence arising out of this Act.

(b) The Cabinet member responsible for the administration of justice must submit any directives issued in terms of paragraph (a) to Parliament before those directives take effect, and the first directives so issued, must be submitted to Parliament within six months of the commencement of this Act.

(2) (a) The National Commissioner of the South African Police Service referred to in section 6 of the South African Police Service Act, 1995 (Act No. 68 of 1995), must issue national instructions as provided for in section 25 of that Act, with which its members must comply in the execution of their functions in terms of this Act, and any instructions so issued must be published in the *Gazette*.

(b) The Cabinet member responsible for safety and security must submit any national instructions issued in terms of paragraph (a) to Parliament before those instructions take effect, and the first instructions so issued, must be submitted to Parliament within six months of the commencement of this Act.

(3) The directives and instructions referred to in this section must provide that adequate disciplinary steps will be taken against a prosecutor or police official who fails to comply with any directive or instruction, as the case may be.

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

Amendment of laws

18. The laws specified in the Schedule are hereby repealed or amended to the extent set out in the third column of the Schedule.

Short title and commencement

19. This Act is called the Protection from Harassment Act, 2009, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE
(Section 18)

| No. and year of law | Short title | Extent of amendment |
|---------------------|---|---|
| Act No. 56 of 1955 | Criminal Procedure Act, 1955 | <p>1. Amendment of section 384 by—</p> <p>(a) the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) Whenever a complaint on oath is made to a magistrate that any person is conducting himself <u>or herself</u> violently towards, or is threatening injury to the person or property of another or that he <u>or she</u> has used language or behaved in a manner towards another likely to provoke a breach of the peace or assault, then, whether such conduct occurred or such language was used or such threat was made in a public or private place, the magistrate [may must] order such person to appear before him <u>or her</u> and, if necessary, may cause him <u>or her</u> to be arrested and brought before him <u>or her</u>, and thereupon the magistrate shall enquire into and determine upon such complaint and may place the parties or any witnesses thereat on oath and [in his discretion may] must, if he or she finds, on a balance of probabilities, that the person against whom the complaint is made did act as is alleged in the complaint, order [the] that person [against whom the complaint is made] to give recognizances with or without sureties in an amount not exceeding [R2 000] the amount determined by the Cabinet member responsible for the administration of justice from time to time by notice in the Gazette for a period not exceeding six months to keep the peace towards the complainant and</p> |

| No. and year of law | Short title | Extent of amendment |
|---------------------|-------------|--|
| | | <p>refrain from doing or threatening injury to his or her person or property.”;</p> <p>(b) the substitution for subsection (2) of the following subsection:</p> <p>“(2) The magistrate may, upon such enquiry, <u>make an order [the person against whom the complaint is made or the complainant to pay the costs of and incidental to the enquiry] as to costs against any party if he or she is satisfied that the party in question has acted frivolously, vexatiously or unreasonably.</u>” and</p> <p>(c) the addition of the following subsection:</p> <p>“(5) (a) The magistrate may, in the prescribed manner and at any stage of proceedings under this section, cause to be subpoenaed any person as a witness at those proceedings, if the evidence of that person appears to the magistrate essential for the proceedings.</p> <p>(b) A witness who is subpoenaed as provided for in paragraph (a), must attend the proceedings and remain in attendance at the proceedings, and a person who is in attendance at any proceedings under this section, though not subpoenaed as a witness, and who is warned by the magistrate to remain in attendance at the proceedings, must remain in attendance at the proceedings, unless he or she is excused by the magistrate.</p> <p>(c) Any person who is subpoenaed to attend proceedings as provided for in paragraph (a)</p> |

| No. and year of law | Short title | Extent of amendment |
|---------------------|------------------------------|--|
| | | <p><u>and who fails to attend or to remain in attendance and any person who is warned by the magistrate to remain in attendance at those proceedings and who fails to remain in attendance, and any person so subpoenaed or so warned who fails to appear at the place and on the date and at the time to which the proceedings in question may be adjourned or who fails to remain in attendance at those proceedings as so adjourned, is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding three months.”.</u></p> |
| Act No. 51 of 1977 | Criminal Procedure Act, 1977 | <p>1. Amendment of section 60 by—</p> <p>(a) the insertion after paragraph (g) of subsection (7) of the following paragraph: “(gA) <u>the view of any person against whom an offence was allegedly committed regarding his or her safety.”;</u></p> <p>(b) the substitution for subsection (10) of the following subsection: “(10) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty, contemplated in subsection (9), to weigh up the personal interests of the accused against the interests of justice: <u>Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence has allegedly been committed.”;</u> and</p> <p>(c) the substitution for subsection (12) of the following subsection: “(12) The court may make the release of an</p> |

| No. and year of law | Short title | Extent of amendment |
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| | | accused on bail subject to conditions which, in the court's opinion, are in the interests of justice: <u>Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence has allegedly been committed.</u> " |
| Act No. 116 of 1998 | Domestic Violence Act, 1998 | <p>1. Insertion of the following section after section 4:</p> <p><u>“Attendance of witnesses</u></p> <p><u>4A.</u> (1) <u>The court may, in the prescribed manner and at any stage of proceedings under this Act, cause to be subpoenaed any person as a witness at those proceedings, if the evidence of that person appears to the court essential to the just decision of the case.</u></p> <p>(2) <u>A witness who is subpoenaed as provided for in subsection (1), must attend the proceedings and remain in attendance at the proceedings, and a person who is in attendance at any proceedings under this Act, though not subpoenaed as a witness, and who is warned by the court to remain in attendance at the proceedings, must remain in attendance at the proceedings, unless he or she is excused by the court.</u></p> <p>(3) <u>Any person who is subpoenaed to attend proceedings as provided for in subsection (1) and who fails to attend or to remain in attendance and any person who is warned by the court to remain in attendance at those proceedings and who fails to remain in attendance, and any person so subpoenaed</u></p> |

| No. and year of law | Short title | Extent of amendment |
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| | | <p><u>or so warned who fails to appear at the place and on the date and at the time to which the proceedings in question may be adjourned or who fails to remain in attendance at those proceedings as so adjourned, is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding three months.”.</u></p> |
| Act No. 60 of 2000 | Firearms Control Act, 2000 | <p>1. Amendment of section 102 by the insertion after paragraph (a) of subsection (1) of the following paragraph: “(aA) <u>a final protection order has been issued against such person in terms of the Protection from Harassment Act, 2009 (Act No. X of 2009);”.</u></p> <p>2. Amendment of Schedule 2 by the insertion after paragraph (d) of item 7 of the following paragraph: “(e) <u>in terms of the Protection from Harassment Act, 2009 (Act No. X of 2009);”.</u></p> |