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**SUBMISSION TO THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT ON THE AMENDMENTS TO THE DOMESTIC VIOLENCE ACT, 1998
BY THE LAW TRUST CHAIR IN SOCIAL JUSTICE, STELLENBOSCH UNIVERSITY**

9 July 2021

For Attention: Hon. S Shaikh, MP

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I. SECTION A: INTRODUCTION

I.1. Background to The Submission

The Law Trust Chair in Social Justice (CSJ) and Stellenbosch University in partnership with the Thuma Foundation is grateful for the opportunity to present written comments on proposed amendments to the **DOMESTIC VIOLENCE ACT, 1998**.

We were to engage with the Department of Justice and Constitutional Development (DOJCD) through Mr Henk Du Preez (Mr Du Preez) and Ms Joy Watson (Ms Watson) who provided contextual input behind the proposed amendments which were helpful in conceptualising this submission. We are also grateful to Deputy Minister John Jeffrey for offering to avail himself to explain the thinking behind the proposed amendments on a mutually suitable date.

This submission is structured in two sections. Section 1 contains the general introduction and background, section 2, the executive summary and finally, section 3 deals with the tabular submission of comments.

The Department of Justice and Constitutional Development (DOJCD) has invited interested parties to submit written comments on proposed amendments to three GBV Bills (insert bills) According to Mr H. Du Preez, a representative from DOJCD, the amendments are in response to President Cyril Ramaphosa's address in September 2019 where government expressed a commitment to ending GBV and announced the five-point emergency plan which was to be implemented without further debate to address the scourge of GBV. One of those plans was to enhance the legal and policy framework to strengthen the state's response to the problem. The three bills are regarded as a package, prepared to comply with the president's request" (Du Preez, 2021).

The current Minister of Justice and Correctional Services under Minister Lamola and the current administration as headed by President Cyril Ramaphosa must be applauded for finally signalling an intention to intensify measures aimed at eradicating this country's GBV scourge.

This submission is a collaboration resulting from a virtual roundtable held by the Law Trust Chair in Social Justice on 05 July 2021. Present at the roundtable were government officials, GBV activists, civil society, and academics. The attendants agreed that it was past time that these GBV bills were amended to address the growing cases of different forms of GBV.

I.2. The Law Trust Chair in Social Justice

The submission stems from continuous social justice research that has been undertaken by the CSJ, the outcome of which includes the emergence of social impact conscious policy and legislation design as key to the transformative constitutionalism dictated by the Constitution.

A research output seeking to facilitate social impact conscious policy and legislation design is the Social Justice Impact Assessment Matrix (SIAM), an instrument designed to facilitate the leveraging of data analytics to predict the likely poverty and equality impact of any planned law, policy, programme, service or decision on any group identified by one or more of the grounds in section 9 of the Constitution.¹ It aims to eschew laws, regulations, policies and service delivery plans that may exacerbate social and economic inequality, including poverty. Where inevitable, the idea is to implement such policies and decisions, with a compensation strategy that will mitigate the unfair

¹ Outlined in T Madonsela "Law and the economy through a social justice lens" in R Parsons (Ed) *Recession, Recovery and Reform: South African Economy after Covid-19* (2020).

impact. The SIAM, which has parallels with government's Social and Economic Impact Assessment Systems (SEIAS), differs from SEIAS in that SIAM has an overt grounding in the constitutional social justice commitment and related equality duty and emphasises using sufficiently disaggregated data to predict the future as it relates to narrowing or widening the substantive equality and poverty gaps.

The working definition of the CSJ is that "social justice is about the equal enjoyment of all rights and freedoms regardless of human diversity reflected in the just, fair and equitable distribution of all opportunities, resources, benefits, privileges and burdens in a society or group and between societies. In a socially just society, it should not be harder for one group to thrive and easier for another." In the case of South Africa, the transformative constitutionalism mandate regarding social justice transcends avoiding disadvantage to one or more groups, the mandate incorporates an injunction to redress legacy imbalances between these groups. This message emerges loud and clear in the Constitutional Court's jurisprudence, the key case in this regard being *Minister of Finance v Van Heerden*.²

1.3. Literature Review on Gender Based Violence In South Africa

As Prof. Thuli Madonsela once told the audience at the University of KwaZulu Natal graduation ceremony, *"It is my considered view that the violence that we experience today and the deficit in ubuntu is part of the complex and ugly shadow of our past. In South Africa, apartheid left many people behind, and as we advance women, sometimes others feel left behind. But even if they are not left behind, some people were brought up to believe that women have less value than them and then when suddenly women have equal value, they feel something has been taken away from them,"* (Singh and Maqhina, 2019).

South Africa arguably has one of the world's most progressive constitutions. However, despite the human rights afforded to all citizens enshrined in the Constitution, South Africa has one of the highest rates of GBV and is characterised as having a culture of violence as a result of the history of apartheid and colonisation (van Niekerk and Boonzaier, 2016). This is confirmed by numerous stories in the media of fatal GBV cases. It is so prevalent that almost everyone we encounter knows of someone, if not themselves, who have been victims of GBV.

It is noteworthy and encouraging that the bills also seek to address the violence on campuses and educational institutions. In this regard, Mahabeer, notes that young women in institutions *"experienced feelings of vulnerability, silenced by ignorance, fear and powerlessness"*. (Mahabeer, 2021)

Thirdly, the discussion centred on the intersectionality of GBV where social norms are concerned. According to a study on Intimate Partner Violence (IPV) in two communities in the Western Cape, communities view IPV through the same lens as other forms of violence (van Niekerk and Boonzaier, 2016), with a culture of "kiss and make up" to be the norm. Race, class and other forms of female oppression (e.g. patriarchy) intersects with GBV.

Fourthly, the bills do not explicitly mention violence against LGBTQ+ citizens, despite its prevalence in South Africa. Legislation on GBV excludes other oppressed minorities whose right are enshrined in the Constitution. *"The narrow focus on VAW in GBV intervention efforts results in the exclusion of violence against gender nonconforming (GNC) individuals, as well as others in the lesbian, gay, trans, queer, intersex,*

asexual (LGBTQIA+) community, and violence between men. A narrow application of the concept of GBV in prevention efforts may fail to address the full range of gendered violence, and therefore only be successful in preventing heteronormative and cis-gendered forms of GBV” (Graaf, 2017).

2. SECTION B: EXECUTIVE SUMMARY

2.1. Introduction to the Domestic Violence Amendment

The Department of Justice and Constitutional Development has invited parties to submit written comments on proposed amendments to the Domestic Violence Act of 1998. These amendments include changes to and the insertion of certain definitions, provide for the manner in which domestic violence and related matters must be dealt with and further regulate protection orders.

Many of these amendments can be seen to be aimed at optimising collaboration between various departments involved in implementing the Act and streamlining the provision of services within these departments as they pertain to the Act.

2.2. General Commentary on the Bill

(1) General Tone and Scope of the Bill

The tone and scope of the bill reflects acute awareness of the enduring and emerging challenges regarding the raging scourge of GBV at homes, workplaces, academic institutions and broader society, including transnational relations. This is commendable. The CSJ accordingly endorses most of the provisions. The submission points out a few provisions that need recasting, exclusion or to be added.

(2) Definitions

(a) Controlling behaviour

The definition of controlling behaviour under Section 1 is too narrowly worded. The aim of the 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.

(b) Damage to Property

Section 1 defines property in relation to damage to property to include property in which the complainant has a vested interest. Clarity on the meaning of interest 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. It should be sufficient for her to merely state that she has an interest in the property to shift the evidentiary burden onto the respondent, for him to then show that the complainant does not have an interest.

(c) Disability

The definition of disability includes “physical, sensory, communication, intellectual, mental or psychological impairment.” The use of the word impairment is too broad in scope and creates legal uncertainty.

(d) Emotional, Verbal or Psychological abuse

Under Section 1, the exclusion of a requirement of repetition or a pattern of behaviour from the definition of “emotional, verbal or psychological abuse” and “harassment” is a favourable amendment. This will protect complainants from the first instance of abuse and not burden them with having to prove multiple events.

(e) Expose a child to domestic violence

The inclusion of this form of abuse in the act will strengthen the protection of children.

(f) Sexual Harassment

The inclusion of sexual orientation and gender expression as part of the grounds for unwelcome behaviour in terms of the definition of sexual harassment under Section 1 are welcome additions. This gives recognition to the various contexts in which abuse and harassment occur.

(g) Stalking and the Protection from Harassment Act

We commend the alignment of the Domestic Violence Act with the Protection from Harassment Act through the deletion of the definition of “stalking” in Section 1 and the amendment of Section 2(a). This clarification of the operation of these two acts side by side creates legal certainty and more importantly strengthens the protections available to survivors of stalking, harassment and domestic violence. The Protection from Harassment Act is better suited to addressing all forms of stalking and harassment, regardless of whether they constitute domestic violence or not. Amendments to the Domestic Violence Act along with the deletion of stalking have sufficiently catered to protection from similar harassment and threatening behaviour within the context of domestic violence. Overall, this *enhances the protections available to victims of harassment in many different contexts.*

(h) Spiritual Abuse

The definition of “spiritual abuse” under Section 1 has been inserted as well as the inclusion of spiritual abuse as a form of domestic violence. The definition of spiritual abuse at (b) includes “preventing the complainant from exercising his or her constitutional right to freedom of conscience, religion, thought, belief and opinion, including to give external manifestation to his or her religious or spiritual convictions and beliefs.” This is a legitimate addition to the overall definition of domestic violence and can be seen as an attempt to uphold the constitutional rights of complainants. However, the wording of this provision may be problematic due to its broad scope.

Clarity is needed regarding whether this extends to parents who want their children to grow up with a certain religious or spiritual belief? The wording suggests that if the complainant (child in this case) has a difference of belief, then they cannot be prevented from practising it. If the complainant/child wants to exercise their own freedom of conscience, thought and belief by holding different beliefs to that of the respondent/caregiver then the caregiver/respondent cannot prevent them from doing so. To what extent does this impact the respondent’s constitutional or parental rights?

This definition also appears to extend beyond strictly spiritual beliefs as it includes all aspects of the constitutional right to freedom of conscience, religion, thought, belief and opinion. This conception of the definition would seemingly extend to other social, political or philosophical beliefs. A holistic interpretation of the definition would note that the term “spiritual abuse” denotes abuse relating to spiritual beliefs, however, this formulation is still ambiguous.

We, accordingly, submit that the provision as it stands will protect the religious rights of complainants, but may have unintended consequences. We suggest that the wording be changed to clarify the extent of this protection relating to the constitutional and parental rights of complainants and respondents.

(i) Obligations to Report and Assist

Section 2A of the Bill places an obligation on service providers to refer affected persons for further assistance, to provide the complainant with access to resources such as a list of available shelter services. This is a commendable amendment to the extent that it enhances accountability across sectors and helps victims form support networks by providing them with resources and information.

Section 2B(2) will enhance the protection of vulnerable groups and is appropriately exclusive of adult complainants who have the capacity to report their own domestic abuse. Presumably, these adult complainants will be appropriately protected by Section 2A through being given access to information and resources.

(j) Protection Orders

Section 4(1)(a) makes provision for a complainant to apply for a protection order to a clerk of the court by way of a secure online submission. We commend this amendment in its facilitation of access to justice for complaints under the act. Due to inequalities regarding digital inclusion, it is important though that the bill includes an injunctions to relevant authorities requiring them to audit current levels of digital access and to take reasonable measures to close the gap before the Act comes into operation together with a clear plan on when full equality of access will be achieved. This is in line with the provisions of the SIAM instrument referred to earlier.

(k) Domestic Violence Safety Monitoring Notice

Section 4A inserts provisions for the Domestic Violence Safety Monitoring Notice. It is a welcome addition to the act and can be used to enhance the effectiveness of protection orders. The use of electronic submission is especially welcome given the lockdown restrictions in place due to COVID-19 related regulations. However, consideration should be given to inserting a buffer provision 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.

(l) Consideration of the application and issuing of an interim protection order

In section 5(1A)(a), the deletion of the word “dependant” will remove the protection available to majors who are dependants and impacted by domestic violence. This particularly excludes vulnerable groups such as persons with disabilities or who are of advanced age. Consideration also needs to be given to the LGBTQTI community as they tend to be victims of hate related violence.

(m) Firearm Removal

The Domestic Violence Act makes provision for the removal of a firearm under section 9 but does not make provision for suspending firearm licences for a specific period of time. Section 9(4) makes provision for declaring a person unfit to hold a licence or possess a firearm but does not explicitly place a duty on the relevant authorities to suspend the licence. This provides insufficient protection and should be remedied with explicit duties to revoke or suspend a licence where a protection order has been granted. Respondents in this situation should also be barred from obtaining a new licence if a protection order has been granted against them.

3. CONCLUSION

The CSJ commends the amendments to the Act which enhances protection for complainants, promotes collaboration between implementing departments and enhances the practicality of the Act. However, for victims of domestic violence to be appropriately protected and for legal clarity, the concerns that have been raised in this submission need to be addressed.

Laws are only as good as their implementation. Indeed, at the opening of our roundtable on GBV it was stressed that most of us have heard of women who have been made to eat the Protection Orders meant to protect them, while some have been abused with the order but received little recourse from the authorities.

The National Strategic Plan on Gender-based Violence and Femicide, 2020 which is the overall policy framework for addressing GBV, is built on six pillars.(insert ref). These pillars are crucial for achieving the mandate of these amendments. The first pillar rests on accountability, coordination and leadership, aimed at holding our leaders to account, something that has been lacking in the past. The second pillar rests on prevention, rebuilding and social cohesion. The third pillar is justice, safety and protection. The fourth is around appropriate responses, care, support and healing, with the fifth pillar centering on economic power, working through the intersection between economic injustice and violence. Lastly, the sixth pillar is research and information management, pertaining to data and evidence collection. This pillar is of particular importance to the CSJ, as it aligns with our social justice impact assessment matrix (SIAM))(as outlined in the background to CSJ above).

Consequently, research and knowledge creation are crucially important in addressing GBV to ensure the creation of new knowledge for understanding the reasons behind the high levels of violence in South African society. For example, how do cultural norms support or undermine GBV and for tracking the mental state of perpetrators to address the underlying causes of GBV.

We therefore stress the need for disaggregated data as this would assist in providing oversight. In particular, we need an anatomy of end users indicating all of their circumstances. It may also 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. The role of mental health deficiencies is particularly worth considering. In addition, data becomes important in the context of the fiscal outlook as data driven planning improves impact efficiencies in solving the mischief laws aim to solve. We therefore submit that that consideration be given to using the SIAM as a tool can plug into the sixth pillar on research and information management, to lead to a better understanding of both services and prevention, as well as upstream approaches.

We look forward to engaging your department to achieve an end to GBV in this country.

Submitted by the Chair in Social Justice

University of Stellenbosch

09 July 2021.

4. Categorized Comments on the Domestic Violence Amendment Bill

AMENDMENT	Purpose of amendment	In agreement with amendment	Reformulate/ Ambiguous	Problematic	Suggested Inclusion
SI: Definitions and Interpretation Amendments	Preparatory Comments				
['arm' means any arm as defined in section 1 (1) or any armament as defined in section 32 (1) of the Arms and Ammunition Act, 1969 (Act 75 of 1969);]		X			
'capture' means to store documents in the— (a) manner; and (b) format, in the integrated electronic repository, as may be prescribed in terms of section 6A;		X			
'care giver' means any person older than 18 years who, in relation to a child, a person with a disability or an older person, takes responsibility for meeting the daily needs of, or is in substantial contact with, such person;		X			

'child' means a person under the age of 18 years;		X			
'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;		X			
'coercive behaviour' means to compel or force a complainant to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing; 'communication' referred to in the definition of 'harassment' means anything that is used to impart information or ideas, and includes a letter, text, photo, video recording, audio recordings, but excludes an electronic communication;		X			
'communication' referred to in the definition of 'harassment' means anything that is used to impart information or ideas, and includes a letter, text, photo, video recording, audio recordings, but excludes an electronic communication;		X			
'complainant' means any person who is or has been in a domestic relationship with a respondent and		X			

<p>who is or has been subjected or allegedly subjected to an act of domestic violence, including any child in the care of the complainant;</p>					
<p>‘controlling behaviour’ means behaviour towards a complainant that is aimed at making the complainant dependent on, or subservient to, the respondent and includes—</p> <p>(a) isolating him or her from sources of support;</p> <p>(b) exploiting his or her resources or capacities for personal gain;</p> <p>(c) depriving him or her of the means needed for independence, resistance or escape; or</p> <p>(d) regulating his or her everyday behaviour;</p>					<p>The aim of the behaviour is too narrowly worded. Perhaps broadening 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. Add intimidation as an aim to broaden the scope.</p>
<p>‘court’ means any magistrate’s court for a district contemplated in the Magistrates’ Courts Act, 1944[(Act 32 of 1944)];</p>					
<p>‘damage to property’ means—</p> <p>(a) the wilful damaging or destruction of property; or</p>		<p>X</p>			

<p>(b) threats to damage or destroy property.</p> <p>belonging to, or which is in the possession or under the control of the complainant, or in which the complainant has a vested interest;</p>					
<p>['dangerous weapon' means any weapon as defined in section 1 of the Dangerous Weapons Act, 1968 (Act 71 of 1968);]</p>		X			
<p>'Director-General' means the Director-General: Justice and Constitutional Development;</p>		X			
<p>'disability' means a moderate to severe limitation of a person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual, mental or psychological impairment;</p>			<p>This has a very broad scope due to the use of the word "impairment".</p>		
<p>'disclose by means of an electronic communications service' means to—</p> <p>(a) send an electronic communication to a person who is the intended recipient of the electronic communication or any other person;</p>		X			

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

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

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

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

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

X

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

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

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

(f) they are persons in a close relationship that share or **[recently]** shared the same residence;

'domestic violence' means—

(a) physical abuse;

(b) sexual abuse;

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

(d) economic abuse;

(e) intimidation;

X
(g)The removal of "stalking" as a form of from the definition of domestic violence then allows for the Protection from Harassment

- (f) harassment;
 - (fA) sexual harassment;
 - (fB) related person abuse;
 - (g) [stalking] spiritual abuse;
 - (h) damage to property;
 - (hA) elder abuse;
 - (hB) coercive behaviour;
 - (hC) controlling behaviour;
 - (hD) to expose a child to domestic violence;
 - (i) entry into the complainant's—
 - (i) permanent or temporary residence without his or her consent, where the parties do not share the same residence; or
 - (ii) workplace or place of study, without his or her consent, where the parties do not share the same workplace or place of study;
- or
- (j) any other [controlling or abusive] behaviour of an intimidating, threatening, abusive, degrading, offensive or humiliating nature towards a complainant,

Act 17 of 2011 to operate without interference. This is a favourable amendment as the Protection from Harassment Act is better suited to deal with the issue of stalking.

<p>where such conduct harms, or [may cause imminent harm to, the safety, health or wellbeing of] <u>inspires the reasonable belief that harm may be caused</u> to the complainant;</p>					
<p>'economic abuse' includes—</p> <p>(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, and mortgage bond repayments or payment of rent in respect of the shared residence or accommodation;</p> <p>(b) the [unreasonable] disposal of household effects or other property in which the complainant has an interest, without the complainant's permission;</p> <p>(c) the use of financial resources of a complainant, without the complainant's permission; or</p> <p>(d) the coercing of the complainant to—</p> <p>(i) relinquish control over assets or income; or</p>		X			

<p>(ii) sign a legal document that would enable the complainant's finances to be managed by another person;</p>					
<p>'educator' means any person, including a person who is appointed to exclusively perform extracurricular duties, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at all public and independent schools as defined in the South African Schools Act, 1996 (Act No. 84 of 1996), all public and private colleges and all public and private further education and training institutions established, declared or registered in terms of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), and all public and private higher education institutions defined in the Higher Education Act, 1997 (Act No. 101 of 1997);</p>		X			
<p>'elder abuse' means abuse of an older person as contemplated in section 30(2) of the Older Persons Act, 2006 (Act No. 13 of 2006), occurring within a domestic relationship;</p>		X			

'electronic communications' means electronic representations of information in any form and includes without limitation voice, sound, data, text, video, animation, visual images, moving images and pictures or a combination or part thereof, that is disclosed by means of an electronic communications service;		X			
'electronic communications identity number' means a technical identification label which represents the origin or destination of electronic communications		X			
'electronic communications network' means an "electronic communications network" as defined in section 1 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), and includes a computer system;		X			
'electronic communication service' means any service which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services, as defined in section 1 of		X			

the Electronic Communications Act, 2005;					
'electronic communications service provider' means an entity or a person who is licensed or exempted from being licensed in terms of Chapter 3 of the Electronic Communications Act, 2005, to provide an electronic communications service;		X			
<p>'emergency monetary relief' means—</p> <p>(a) compensation for monetary losses suffered by a complainant <u>before or</u> at the time of the issue of a protection order as a result of the domestic violence, including—</p> <p>[(a)](i) loss of earnings;</p> <p>[(b)](ii) medical, optical, [and] dental <u>and related expenses;</u></p> <p>[(c)](iii) relocation and accommodation expenses;</p> <p>[or]</p> <p>[(d)](iv) <u>expenses for acquiring</u> household necessities;</p> <p>[(e)](v) <u>education expenses; or</u></p>		X			

<p>[(f)](vi) expenses in respect of psychosocial services and counselling; and</p> <p>(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);</p>					
<p>'emotional, verbal [and] or psychological abuse' means [a pattern of] degrading, manipulating, threatening, offensive, intimidating or humiliating conduct towards a complainant that causes mental or psychological harm to a complainant, including—</p> <p>(a) [repeated] insults, ridicule or name calling;</p> <p>(b) [repeated] threats to cause emotional pain; [or]</p> <p>(c) the [repeated] exhibition of obsessive possessiveness or jealousy, which [is such as to] constitutes a serious invasion of the complainant's privacy, liberty, integrity or security;</p>		<p>X</p> <p>The exclusion of a repetition or a pattern of behaviour is a favourable amendment. This will protect complainants from the first instance of abuse and not burden them with having to prove multiple events.</p>			

<p>(d) the wilful damaging or destruction of any property in close vicinity of a complainant;</p> <p>(e) to harm or threaten to harm a household pet or other animal, whose welfare affects a complainant's well-being;</p> <p>(f) to disclose or threaten to disclose a complainant's sexual orientation or other private information concerning a complainant, to others against the complainant's wishes;</p> <p>(g) to threaten the complainant with the death or injury of another person or damage of another person's property; or</p> <p>(h) threats to commit suicide or self-harm;</p>					
<p>'expose a child to domestic violence' means to intentionally cause a child to—</p> <p>(a) see or hear domestic violence; or</p> <p>(b) experience the effects of domestic violence;</p>		<p>X This is a very useful addition to the act and will strengthen the protection of children.</p>			

<p>'functionary', for purposes of section 2A, means—</p> <p>(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</p> <p>(b) any other person—</p> <p>(i) belonging to a class or category of persons; or</p> <p>(ii) who is in the employ of any class or category of entities, designated by the Minister by notice in the Gazette;</p>		<p>X</p>			
<p>'harassment' means [engaging in a pattern of conduct that induces the fear of harm to a complainant including]—</p> <p>(a) [repeatedly] the unreasonable—</p> <p>(i) following, watching, pursuing or accosting of the complainant or a related person; or</p> <p>(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,</p>		<p>X</p> <p>The deletion of the requirement of repeated behaviour will ensure that complainants are protected from the first instance and do not need to wait for the behaviour to escalate to receive protection.</p>			

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

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

- (i) a conversation ensues; or
- (ii) any information is conveyed to the complainant;

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

(d) the unauthorised access to a complainant's communications or electronic communications;

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

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

(g) to unreasonably interfere with any property that is exclusively used by or in the possession of the complainant;

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

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

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

(iii) inspires the belief in the complainant that he or she or a related person may be

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<p>harmful or their property may be damaged; or</p> <p>(i) to disclose an electronic communication, or to make a communication available, to another person concerning a complainant, which—</p> <p>(i) contains information of a private nature;</p> <p>(ii) violates or offends the sexual integrity or dignity of a complainant;</p> <p>(iii) is abusive, degrading, offensive or humiliating; or</p> <p>(iv) inspires the belief in the complainant that he or she or a related person may be harmed or their property may be damaged;</p>					
<p>'health care personnel' means health care personnel as defined in section 1 of the National Health Act, 2003 (Act No. 16 of 2003), and who belongs to any category or class of health care personnel designated by the Director-General: Health in terms of a directive contemplated in section 18B, as a functionary;</p>		X			
<p>'integrated electronic repository' means the integrated</p>					

<p>electronic repository for domestic violence protection orders, established in terms of section 6A;</p>					
<p>'intimidation' means [uttering or conveying a threat to, or causing a complainant to receive a threat, which induces fear]—</p> <p>(a) physical violence, or damage to property belonging, to a complainant or any other person;</p> <p>(b) threats of physical violence, or damage to property belonging, to a complainant or any other person; or</p> <p>(c) to deprive the complainant or any other person of their liberty or threatening to do so, where such conduct is intended to compel a complainant to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing;</p>		<p>X</p>			
<p>'medical practitioner' means a person registered as a medical practitioner in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);</p>					

<p>'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);</p>		X			
<p>'Minister' means the Cabinet member responsible for the administration of justice</p>		X			
<p>'official in the employ of a public health establishment' means a person who—</p> <p>(a) is in the employ of a public health establishment as defined in section 1 of the National Health Act, 2003 (Act No. 61 of 2003); and</p> <p>(b) belongs to any category or class of persons designated by the Director-General: Health in terms of a directive contemplated in section 18B, as a functionary;</p>		X			
<p>'peace officer' means a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);</p>		X			
<p>'person in a close relationship' means a relationship between the complainant and any other person, which the court, with regard to the following criteria—</p>		X			

(a) the degree of trust between the persons;

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

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

(d) frequency of contact between the persons; and

(e) the degree of intimacy between the persons,

would consider as a person in a close relationship with the complainant;

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

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

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

(c) to administer, attempt to administer or threaten to administer—

X

<p>(i) any drug as defined in section 1(1) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992);</p> <p>(ii) any Scheduled substance as defined in section 1(1) of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), that affects or may affect a complainant's judgement or decision-making abilities or is harmful to the health or wellbeing of the complainant; or</p> <p>(iii) any chemical or other substance that is harmful to the health or wellbeing of the complainant,</p> <p>to a complainant, without the complainant's permission; or</p> <p>(d) withholding or threatening to withhold a complainant's medication</p>					
<p>'prescribed' means prescribed in terms of a regulation made under section 19</p>		X			

<p>‘protection order’ means an order issued in terms of section 5 or 6 but, in section 6, excludes an interim protection order;</p>		X			
<p>‘related person’ means any member of the family or household of a complainant, or a person in a close relationship with the complainant;</p>		X			
<p>‘related person abuse’ means to—</p> <p>(a) threaten the complainant with causing of physical violence to, or the damage of property of, a related person;</p> <p>(b) threaten a related person with physical violence or causing damage to the property of, such a person;</p> <p>(c) threaten a related person with causing of physical violence to, or the damage of property of, a complainant; or</p> <p>(d) commit an act of physical violence against, or cause damage to property of, a related person,</p> <p>where such actions can in the circumstances be regarded as abuse to cause harm to the complainant;</p>		X			

<p>'residence' means any part of any structure, including a building, house, room, shed, hut, tent, mobile home, caravan, boat or other place, that is used as a place of residence by a natural person, irrespective whether or not other persons also occupy that structure;</p>		X			
<p>'respondent' means any person who is or has been in a domestic relationship with a complainant and who—</p> <p>(a) has committed or allegedly committed; or</p> <p>(b) has used or allegedly used a third party actor to commit or allegedly to commit,</p> <p>an act of domestic violence against the complainant;</p>		X	The inclusion of the use of third parties appropriately broadens the scope of the definition.		
<p>'sexual abuse' means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant, irrespective of whether or not such conduct constitutes a sexual offence as contemplated in the Criminal Law (Sexual Offences and Related</p>		X			

Matters) Amendment Act, 2007
(Act No. 32 of 2007);

'sexual harassment' means any—

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

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

- (i) of a sexual nature; or
- (ii) regarding the complainant's or related person's sexual orientation, gender or gender expression, by a respondent, that has the effect of offending, intimidating or humiliating the complainant;

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

(d) implied or expressed threat of reprisal made to, or actual reprisal against, the complainant for refusal

X
The inclusion of sexual orientation and gender expression are welcome additions.

to comply with a sexually oriented request;					
' 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 the said Act;		X			
' social worker ' means a person registered as a social worker in terms of section 17 of the Social Service Professions Act, 1978 (Act No. 110 of 1978);		X			
<p>'spiritual abuse' means—</p> <p>(a) advocating hatred against the complainant because of his or her religious or spiritual beliefs, that constitutes incitement to cause harm to the complainant;</p> <p>(b) preventing the complainant from exercising his or her constitutional right to freedom of conscience, religion, thought, belief and opinion, including to give external manifestation to his or her religious or spiritual convictions and beliefs; or</p> <p>(c) manipulating the complainant's religious or spiritual convictions and</p>			At (b) would this extend 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		

<p>beliefs to justify or rationalise abusing the complainant;</p> <p>['stalking' means repeatedly following, pursuing, or accosting the complainant;]</p>			<p>constitutional or parental rights. The provision as it stands will protect the religious rights of complainants but may have unintended impacts.</p>		
<p>'third party actor' means any person—</p> <p>(a) who is not or has not been in a domestic relationship with a complainant;</p> <p>(b) who conspired with, was procured by, or used by, the respondent to commit an act of domestic violence against the complainant; and</p> <p>(c) who—</p> <p>(i) committed or allegedly committed an act of domestic violence against the complainant; or</p> <p>(ii) aided or allegedly aided the respondent in the commission of an act of domestic violence against the complainant;</p>		X			

<p>'this Act' includes the regulations[.]; and</p>		<p>X</p>			
<p>'weapon' means—</p> <p>(a) any airgun, ammunition, imitation firearm, muzzle loading firearm, firearm or handgun as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000); or</p> <p>(b) any object, other than that which is referred to in paragraph (a), which is likely to inflict grievous bodily harm or a dangerous wound, if it were used to commit an assault.</p> <p>(2) (a) This Act does not prevent a complainant from applying for relief in terms of the Protection from Harassment Act, 2011 (Act No. 17 of 2011), where a third party actor committed an act, if committed by a respondent, would amount to domestic violence against the complainant, and which constitutes harassment in terms of that Act.</p> <p>(b) A complainant may simultaneously with an application for protection order in terms of section 4, also apply for the relief referred to in paragraph (a).</p>		<p>X</p> <p>S2(a) and (b) are welcome clarifications to the operation of the Protection from Harassment Act in relation to the principal act.</p>			

<p>(c) A respondent who uses a third party actor to commit an act of domestic violence against a complainant, is for purposes of this Act regarded as to have committed such act of domestic violence, personally.”.</p>					
<u>AMENDMENT</u>	PURPOSE OF AMENDMENT	In agreement with Amendment	Reformulate/ Ambiguous	Problematic	Suggested Inclusion
Amendment of Provisions	Preparatory Comments				
<p>Obligations of functionaries relating to domestic violence</p> <p>2A. (1) A functionary, who in the course of the performance of his or her duties or the exercise of his or her functions obtains information which, after evaluation by him or her, causes him or her to believe or suspect on reasonable grounds, that a child, a person with a disability or an older person, may be a complainant as contemplated in section 1—</p> <p>(a) must without delay—</p> <p>(i) complete a report in the prescribed form setting out</p>		X			

<p>the reasons for such belief or suspicion; and</p> <p>(ii) in the prescribed manner submit the report to—</p> <p>(aa) a social worker; or</p> <p>(bb) a member of the South African Police Service;</p> <p>(b) must conduct a risk assessment as prescribed in terms of section 18B; and</p> <p>(c) may, after the evaluation of the risk assessment referred to in paragraph (b), provide or refer the complainant for further services as prescribed in section 18B.</p> <p>(2) A functionary referred to in subsection (1)—</p> <p>(a) who makes the report, referred to in subsection (1)(a), in good faith, is not liable to civil, criminal or disciplinary action on the basis of the report, despite any law, policy or code of conduct prohibiting the disclosure of personal information; and</p> <p>(b) is entitled to have his or her identity kept confidential, unless the interests of justice require otherwise.</p>					
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Obligation to report domestic violence and to provide information

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

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

(a) be made in the prescribed form;

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

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

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

(a) who makes the report in good faith, is not liable to civil, criminal or

disciplinary action on the basis of the report, despite any law, policy or code of conduct prohibiting the disclosure of personal information; and

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

(4) A person who fails to comply with subsection (1), is guilty of an offence.”.

Section 3
Arrest by peace officer
without warrant and
assistance to complainant

3. (1) A peace officer who attends the scene of an incident of domestic violence, may without a warrant, arrest any respondent [at the scene of an incident of domestic violence whom he or she] who such peace officer reasonably suspects of having committed [an offence containing an element of violence against a complainant] an act of domestic violence which constitutes an offence in terms of any law.

X

(2) A peace officer **must**, without a warrant, arrest any respondent at the scene of an incident of domestic violence who he or she **on reasonable grounds** believes of having committed an act of domestic violence which **constitutes** an offence containing an element of violence against a complainant.

(3) A peace officer contemplated in subsection (1) or (2), who is not a member of the South African Police Service and who responds to an incident of domestic violence, **must—**

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

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

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

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<p>(ii) if it is reasonably possible to do so, hand a notice containing information as prescribed to the complainant in the official language of the complainant's choice; and</p> <p>(iii) if it is reasonably possible to do so, explain to the complainant the content of such notice, including the remedies at the complainant's disposal in terms of this Act and the right to lodge a criminal complaint, if applicable; and</p> <p>(c) provide such further assistance as may be prescribed in terms of section 18B.</p>					
<p style="text-align: center;">Section 3A</p> <p style="text-align: center;">Entering of private residence for purposes of obtaining evidence</p> <p>3A. (1) If a member of the South African Police Service—</p> <p>(a) receives a report that an offence containing an element of physical violence has allegedly been committed during an incident of domestic violence; and</p>		X			

(b) reasonably suspects that a person who may furnish information regarding that alleged offence is in any private residence,

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

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

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

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

Section 4

Section 4(1)(a)
makes

Application for protection order

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

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

(aa) with the clerk of the court; or
(bb) electronically, by submitting the application to an electronic address,

of the court having jurisdiction.

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

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

provision for a complainant to apply for a protection order to a clerk of the court by way of a secure online submission. We commend this amendment in its facilitation to the 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 addition to the act.

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

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

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

- (a) a minor;
- (b) mentally retarded;
- (c) unconscious; or
- (d) a person whom the court is satisfied is unable to provide the required consent].

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

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

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

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

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

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

(b) The [application and affidavits must be lodged with the] clerk of the court [who shall forthwith] must submit [the] an application referred to in subsection (1)(b)(i) and supporting affidavits to the court.

Section 4
Domestic violence safety monitoring notice

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

(a) simultaneously with the application for a protection order in terms of section 4(1), or where the court has not issued an interim protection order, at any stage

X
4A the
Domestic
violence safety
monitoring
notice is a
welcome
addition to the
act and can be
used to
enhance the
effectiveness
of protection
orders. The
use of
electronic
submission is

before the court issues a final protection order or discharges the matter in terms of section 6; or

(b) where an interim protection order contemplated in section 5(2), or a final protection order contemplated in section 6, is in force,

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

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

(a) with the clerk of the court; or

(b) electronically, by submitting the application to an electronic address, of the court having jurisdiction.

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

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

especially welcome given the lockdown restrictions in place due to the Disaster Management Act.

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

(6) If the court is satisfied from information on oath or affirmation as set out in the application and such additional evidence contemplated in subsection (5), that—

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

(b) there are reasonable grounds to suspect that the respondent poses a threat to the complainant's personal safety, the court may issue a domestic violence safety monitoring notice in the prescribed form.

(7) A court may in terms of a domestic violence safety monitoring notice, order the station commander of a police station within the area of jurisdiction of the

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court to direct a member of the South African Police Service under his or her command, for the period specified in the notice, and subject to any conditions specified in the notice, to do any or all of the following—

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

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

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

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

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

(8) The notice must be served on the station commander and the respondent, in the prescribed manner: Provided that the Annexure referred to in subsection (7)(a), may not be disclosed to the respondent.

(9) The clerk of the court must—

(a) in the prescribed form and manner—

- (i) notify the complainant of the outcome of an application;
- (ii) where the court has issued a domestic violence safety monitoring notice, upon service or upon receipt of a return of service of the notice on the respondent, notify the complainant thereof; and
- (iii) forward a certified copy of the notice to the complainant; and

(b) capture the application referred to in subsection (2), the domestic violence safety monitoring notice issued in terms of subsection (6), the return of service of the notice on the respondent and the station commander in terms of subsection (8), and such other information as

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may be prescribed for purposes of this section, in the integrated electronic repository.

(10) For purposes of subsection (7)(b) and (c), a member must execute the notice in the prescribed manner.

(11) At the expiry of the period for which the notice was issued, a report containing the prescribed information must be filed with the clerk of the court in the prescribed manner by the station commander referred to in subsection (7) or his or her delegate.

(12) The National Commissioner of the South African Police Service in consultation with the Director-General must, in terms of section 18(3), issue national instructions as may be necessary for the purpose of giving effect to the provisions of this section by the South African Police Service.

Section 5
Consideration of application and issuing of interim protection order

5. (1) The court must as soon as is reasonably possible consider an

S5(1A)(a) the deletion of the word “dependant” will remove the protection available to

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

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

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

major who are dependants and impacted by domestic violence. This particularly excludes vulnerable groups such as persons with disabilities or who are of an advanced age.

(6) An interim protection order is only in force once it has been served on the respondent. This results in an unprotected window from the granting of the order to the service on the respondent. Given the urgency with

(b) by a designated social worker as contemplated in section 47 of the Children's Act, 2005 (Act No. 38 of 2005), if it appears to that court that a child involved in or affected by proceedings in question is in need of care and protection, whereupon the provisions of that Act apply with the changes required by the context.

(2) If the court is satisfied that—

(a) there is prima facie evidence that the—

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

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

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

the court must, notwithstanding the fact that the respondent has not been given notice of the

which most complainants require protection we suggest 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* so 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.

proceedings contemplated in subsection (1), issue an interim protection order **in the prescribed form** against the respondent **[, in the prescribed manner]**.

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

- (i) certified copies of the application referred to in section 4(1)(b), and any supporting affidavit that accompanied the application;**
- (ii) the record of any evidence noted in terms of subsection (1); and**
- (iii) the original interim protection order issued in terms of subsection (2).**

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

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

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

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

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

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

cause on the return date specified in the notice why a protection order should not be issued.

(b) The clerk of the court must in the prescribed form and manner, notify the complainant that the court has not issued an interim protection order.

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

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

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

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

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

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

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

(c) cause—

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

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

to be served on the complainant **in the prescribed manner.**

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

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

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

(9) An interim protection order issued in terms of this section remains in force until it is set aside by a competent court.

Section 5A
Attendance of witnesses

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

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essential to the just decision of the case.

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

(b) A person who—

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

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

must remain in attendance until excused by the court.

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

(a) attend or to remain in attendance;

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

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

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

is guilty of an offence.

Section 5B

Electronic communications service provider to furnish particulars to court

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

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

(b) issue a direction in the prescribed form, directing an electronic communications service provider, that is believed to be able to furnish such particulars, to furnish the court in the prescribed

X

manner by means of an affidavit in the prescribed form with—

- (i) the electronic communications identity number from where the electronic communication originated;
- (ii) the name, surname, identity number and address of the person to whom the electronic communications identity number has been assigned;
- (iii) any information which indicates that the electronic communication was or was not sent from the electronic communications identity number of the person to the electronic communications identity number of the complainant;
- (iv) any information that is available to an electronic communications service provider that may be of assistance to the court to identify the person who disclosed the electronic communication or the electronic communications service provider, that provides a service to that person;

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

(vi) an assessment whether or not the electronic communications service provider is in a position—
(aa) to remove the electronic communication or a link to the electronic communication; or
(bb) to disable access to such electronic communication or a link to such electronic communication.

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

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

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

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

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

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

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

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

(a) must consider the application;

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

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

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

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

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on the date to which the proceedings have been adjourned.

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

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

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

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

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

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

(a) information that was provided to the court;

(b) reference number of the direction; and

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

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

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

- (i) The name and physical and postal addresses;
- (ii) an electronic mail address;
- (iii) a telephone and facsimile number; and
- (iv) the names of persons who are responsible for providing the information referred to in subsection (1)(b).

(c) An electronic communications service provider must, in the prescribed manner and without undue delay, bring any change of any of the particulars referred to in paragraph (b) to the attention of the

Director-General: Communications and Digital Technologies.

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

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

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

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

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

(10) (a) The complainant is liable for the costs, referred to in subsection (9), in respect of the furnishing of the information referred to in

subsection (1)(b), providing the information contemplated in subsection (7) to the respondent, and the removing or disabling access to the electronic communication, referred to in subsection (6)(a).

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

- (i) the means of the complainant; and
- (ii) any other circumstances which, in the opinion of the court, should be taken into consideration,

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

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

(d) The court may, if it has ordered the State to pay the costs referred

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to in paragraph (c), direct who must refund the costs so paid by the State.

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

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

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

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

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

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is guilty of an offence.

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

Section 5C
Existing and reciprocal orders or applications

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

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

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

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

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

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

(a) must record those orders on the court file

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

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

for the amendment, variation or setting aside of such order.

Section 6
Issuing of final protection order

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

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

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

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

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

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

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

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

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

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

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

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

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

(2A) (a) If the respondent appears 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 the complainant in the prescribed form and manner of the extended date.

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

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(2B) (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(4), the court may, after due consideration of any evidence previously received in terms of section 5(1)—

- (i) set a new return date for the hearing of oral evidence; or
- (ii) discharge the matter.

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

(3) (a) Sections 51A and 51C of the Magistrates' Courts Act, 1944, apply to a hearing contemplated in subsection (2).

(b) In instances where paragraph (a) does not apply, [T]he court may, [on] of its own accord or [on] at the request of the complainant or a witness who is in a domestic relationship with the respondent [, if it is of the opinion that it is just or desirable to do so], and if it is in the interests of justice to do so,

order that in the examination of **[witnesses, including]** the complainant **or a witness,** a respondent who is not represented by a legal representative—

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

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

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

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

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

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

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

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

(b) The clerk of the court must capture—

(i) the final protection order;

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

(iii) the return of service of—

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

(bb) a copy of the final protection order and warrant of arrest on the complainant, in the integrated electronic repository.

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

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

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

Section 6A
Integrated electronic repository for domestic violence protection orders

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

(2) (a) The Director-General must appoint or designate a fit and proper person, with due regard to

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his or her relevant expertise, experience, conscientiousness and integrity, as administrator of the integrated electronic repository.

(b) The administrator of the integrated electronic repository—

- (i) must carry out the administrative duties relating to the functioning of the integrated electronic repository;
- (ii) must manage, and exercise administrative control over the integrated electronic repository;
- (iii) must ensure compliance with any directive issued in terms of subsection (3); and
- (iv) is, for purposes of the exercise of the powers, performance of the functions and carrying out of the duties conferred upon, assigned to or imposed upon him or her under this Act, accountable to the Director-General.

(3) In achieving the objectives contemplated in subsection (1), the Director-General must, in consultation with the administrator of the integrated electronic

repository and the Information Regulator established in terms of section 39 of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), issue directives to prescribe—

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

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

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

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

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

(f) the operation of the integrated electronic repository;

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

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

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

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

Section 7(1)&(2)

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

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

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(b) enlisting the help of another person to commit any such act;

(c) entering a residence shared by the complainant and the respondent: Provided that the court may impose this prohibition only if it appears to be in the best interests of the complainant;

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

(e) entering the complainant's residence;

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

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

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

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

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

(a) an order—

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

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

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

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Section 7 (4A)

(4A) (a) If the court is satisfied, from evidence adduced at a hearing in terms of section 6, that the respondent is probably a person contemplated in section 33(1) of the Prevention of and Treatment for Substance Abuse Act, 2008 (Act No. 70 of 2008), the court may order the respondent to appear before a specified magistrate's court having jurisdiction on a specified date and time in connection with an enquiry in terms of section 35 of the Prevention of and Treatment for Substance Abuse Act, 2008.

(b) Where the respondent concerned fails to appear at the place and on the date and at the time referred to in paragraph (a), a magistrate of the relevant court may, at the request of a prosecutor attached to the court, issue a warrant referred to in section 33(3) of the Prevention of and Treatment for Substance Abuse Act, 2008, directing that the respondent concerned must be apprehended and be brought before the magistrate.

(c) A prosecutor attached to the relevant court must obtain a report

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referred to in section 33(4) of the Prevention of and Treatment for Substance Abuse Act, 2008.

(d) Section 35 of the Prevention of and Treatment for Substance Abuse Act, 2008, applies, with the necessary changes required by the context, in respect of a respondent who appears before a magistrate, in pursuance of an order made under paragraph (a), as if he or she were a person brought before the said magistrate in terms of section 33 of that Act and as if the report obtained in terms of paragraph (c) were a report obtained in terms of section 33(4) of that Act.

(e) A copy of the record of the hearing in terms of section 6, certified or purporting to be certified by the clerk of the court or, in the case where the proceedings were recorded by electronic means, by the person who transcribed the proceedings, as a true copy of such record may, subject to section 11 and any direction of the court referred to in paragraph (a), be produced at the said enquiry as evidence.

Section 7(5)

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

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

(c) Where the complainant or related person is a child, the 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.

Section 7(7)

(7) (a) The court may not refuse—

- (i) to issue a protection order;
- or

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<p>(ii) to impose any condition or make any order which it is competent to impose or make under this section,</p> <p>merely on the grounds that other legal remedies are available to the complainant.</p> <p>(b) If the court is of the opinion that any provision of a protection order deals with a matter that should, in the interests of justice, be dealt with further in terms of any other relevant law, including the Maintenance Act, 1998, the court must order that such a provision [shall] must be in force for such limited period as the court determines, in order to afford the party concerned the opportunity to seek appropriate relief in terms of such law.</p>					
<p><u>Section 8(1)</u></p> <p>(1) Whenever a court issues a protection order in terms of section 5(2) or 6, the court must make an order—</p> <p>(a) authorising the issue of a warrant for the arrest of the respondent, in the prescribed form; and</p>		X			

<p>(b) suspending the execution of such warrant subject to compliance with any prohibition, condition, obligation or order imposed in terms of section 7.</p>					
<p><u>Section 8(4)&(5)</u></p> <p>(4) (a) A complainant may hand the warrant of arrest together with an affidavit in the prescribed form, wherein it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order, to any member of the South African Police Service.</p> <p>(b) If it appears to the member concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant is suffering or may suffer [imminent] harm as a result of the alleged breach of the protection order by the respondent, the member must [forthwith] immediately arrest the respondent for allegedly committing the offence referred to in section 17(1)(a).</p>		X			

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

- (i) specifies the name, the residential and work address and the occupation or status of the respondent;
- (ii) calls upon the respondent to appear before a court, and on the date and at the time, specified in the notice, on a charge of committing the offence referred to in section 17(1)(a); and
- (iii) contains a certificate signed by the member concerned to the effect that [he or she] the member handed the original notice to the respondent and that [he or she] the member explained the import thereof to the respondent.

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

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

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

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

(c) the length of time since the alleged breach occurred; **and**

<p>(d) the nature and extent of the harm previously suffered in the domestic relationship by the complainant or a related person.</p>					
<p>Section 9 Seizure of [arms and dangerous] weapons</p> <p>9.(1) The court must order a member of the South African Police Service to seize any [arm or dangerous] weapon in the possession or under the control of a respondent as specified in that order, regardless of the requirements of the respondent's employment to possess such weapon, if the court is satisfied on the evidence placed before it, including any affidavits supporting an application referred to in section 4(1), that—</p> <p>(a) the respondent has threatened or expressed the intention to kill or injure himself or herself, [or] any person in [a] the domestic relationship [or], a related person, or any other person, whether or not by means of such [arm or dangerous] weapon; or</p>				<p>No provision has been made for the suspension of a firearm licence when the respondent has been declared unfit.</p>	<p>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.</p>

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

- (i) state of mind or mental condition;
- (ii) inclination to violence; or
- (iii) use of or dependence on intoxicating liquor or drugs.

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

submitted to the National Commissioner of the South African Police Service.

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

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

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

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

(ii) if the return of the **[dangerous]** weapon has not been ordered

- within 12 months after it had been so seized; or
- (iii) if the court is satisfied that it is in the interest of the safety of any person concerned,

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

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

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

- (i) determine whether the respondent holds a licence, permit, competency certificate or other authorisation in terms of the Firearms Control Act,

<p>2000, for any firearm; [and] (ii) in terms of section 102 of the Firearms Control Act, 2000, determine whether the person is unfit to possess a firearm[.]; and (iii) [and] inform the National Commissioner of the South African Police Service of his or her decision regarding the fitness of the person to possess a firearm.</p>					
<p>Section 10(1)&(2)</p> <p>(1) (a) A complainant or a respondent may, upon written notice to the other party and the court concerned, apply for the variation or setting aside of a protection order referred to in section 6 in the prescribed manner.</p> <p>(b) The other party must, if he or she opposes the application, within 10 days of receiving the notice referred to in paragraph (a), give written notice to the other party and the court setting out grounds and facts on which the application is opposed.</p>		X			

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

Section 11(2)

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

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

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<p>parties to the proceedings or of any witness at such proceedings.</p>					
<p>Section 12(1)&(2)</p> <p>(1) Any court within the area in which—</p> <p>(a) the complainant permanently or temporarily resides, studies, carries on business or is employed;</p> <p>(b) the respondent permanently or temporarily resides, carries on business or is employed; or</p> <p>(c) the cause of action arose, has jurisdiction to grant a protection order as contemplated in this Act.</p> <p>(2) No specific minimum period is required in relation to subsection (1)(a), or (b).</p>		X			
<p>Section 13(1)</p> <p>(1) (a) Service of any document in terms of this Act must [forthwith] be effected immediately on the person affected by it at his or her residence or place of business, employment or study in the prescribed manner by the clerk of the court, the sheriff or a peace</p>		X			

officer [, or as the court may direct].

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

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

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

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

Section 15

[Costs] Orders as to costs of service and directions

15. (1) The court may **[only]**, having regard to the conduct of the parties as far as it may be relevant, make an order as to costs against

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any party if it is satisfied that such party has acted frivolously, vexatiously or unreasonably.

(2) Notwithstanding the provisions of subsection (1), the court must where a final protection order is issued in terms of section 6, make an order as to costs against the respondent in respect of the—

(a) service of any process or documents;

(b) obtaining of information as contemplated in section 5B(1)(b);

(c) removal of, or disabling of access to, electronic communications contemplated in section 5B(6); or

(d) providing of the information referred to in section 5B(7).

Section 16

Appeal and review

16. The provisions in respect of appeal and review contemplated in the Magistrates' Courts Act, 1944[**(Act 32 of 1944)**], and the [**Supreme Court Act, 1959 (Act 59 of 1959)**] Superior Courts Act, 2013 (Act No.

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10 of 2013), apply to any proceedings in terms of this Act.					
<p style="text-align: center;">Section 17</p> <p>Offences</p> <p>17. (1) Notwithstanding the provisions of any other law, any person who—</p> <p>(a) contravenes any prohibition, condition, obligation or order imposed in terms of section 7;</p> <p>(b) contravenes the provisions of section 11(2)(a);</p> <p>(c) fails to comply with any direction in terms of the provisions of section 11(2)(b); or</p> <p>(d) in an affidavit referred to in section 8(4)(a), wilfully makes a false statement in a material respect, is guilty of an offence and liable on conviction—</p> <p style="padding-left: 20px;">(i) in the case of an offence referred to in paragraph (a)—</p> <p style="padding-left: 40px;"><u>(aa) if it is a first conviction,</u> to a fine or imprisonment for a</p>		X			

period not exceeding five years or to both such fine and such imprisonment[.,]; or

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

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

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

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

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

(3) Any electronic communications service provider or employee of an electronic communications service provider, who is convicted of an offence referred to in section 5B(1)(a), (b), (c) or (d), is liable on conviction, in the case of—

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

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

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

Section 18(1)&(2)

X

(1) No prosecutor ~~[shall]~~ ~~may~~—

(a) refuse to institute a prosecution;
or

(b) withdraw a charge,

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

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

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

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

<p>(2) The National Director of Public Prosecutions referred to in section 10 of the National Prosecuting Authority Act, 1998, in consultation with the Minister [of Justice] and after consultation with the Directors of Public Prosecutions, must determine prosecution policy and issue policy directives regarding any offence arising from an incident of domestic violence.</p>					
<p>Section 18(4)(a)</p> <p>(a) Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the national instructions referred to in subsection (3), constitutes misconduct as contemplated in the South African Police Service Act, 1995, and the Secretariat, established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, [2010] 2011 (Act No. 2 of 2011), must [forthwith] be informed immediately of any such failure reported to the South African Police Service.</p>		X			
<p>Section 18A</p>		X			

Directives for clerks of court

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

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

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

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

Section 18B

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

X

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

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

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

publish in the Gazette directives regarding matters which are reasonably necessary or expedient to be provided for and which are to be followed by functionaries and other relevant persons when dealing with incidents of domestic violence, in order to achieve the objects of this Act.

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

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

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

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

(d) prescribe the assistance that a member of the South African Police Service or a peace officer who attends a scene of an incident of domestic violence must provide to a complainant and affected children;

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

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(f) provide for the designation of accredited shelters;

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

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

(3) Any directives issued in terms of subsection (1) must be submitted to Parliament before those directives take effect.

Section 19

Regulations

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

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

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

(c) any other matter which the Minister deems necessary or

X

expedient to be prescribed in order to achieve the objects of this Act.

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

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

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

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

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

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

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

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

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

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

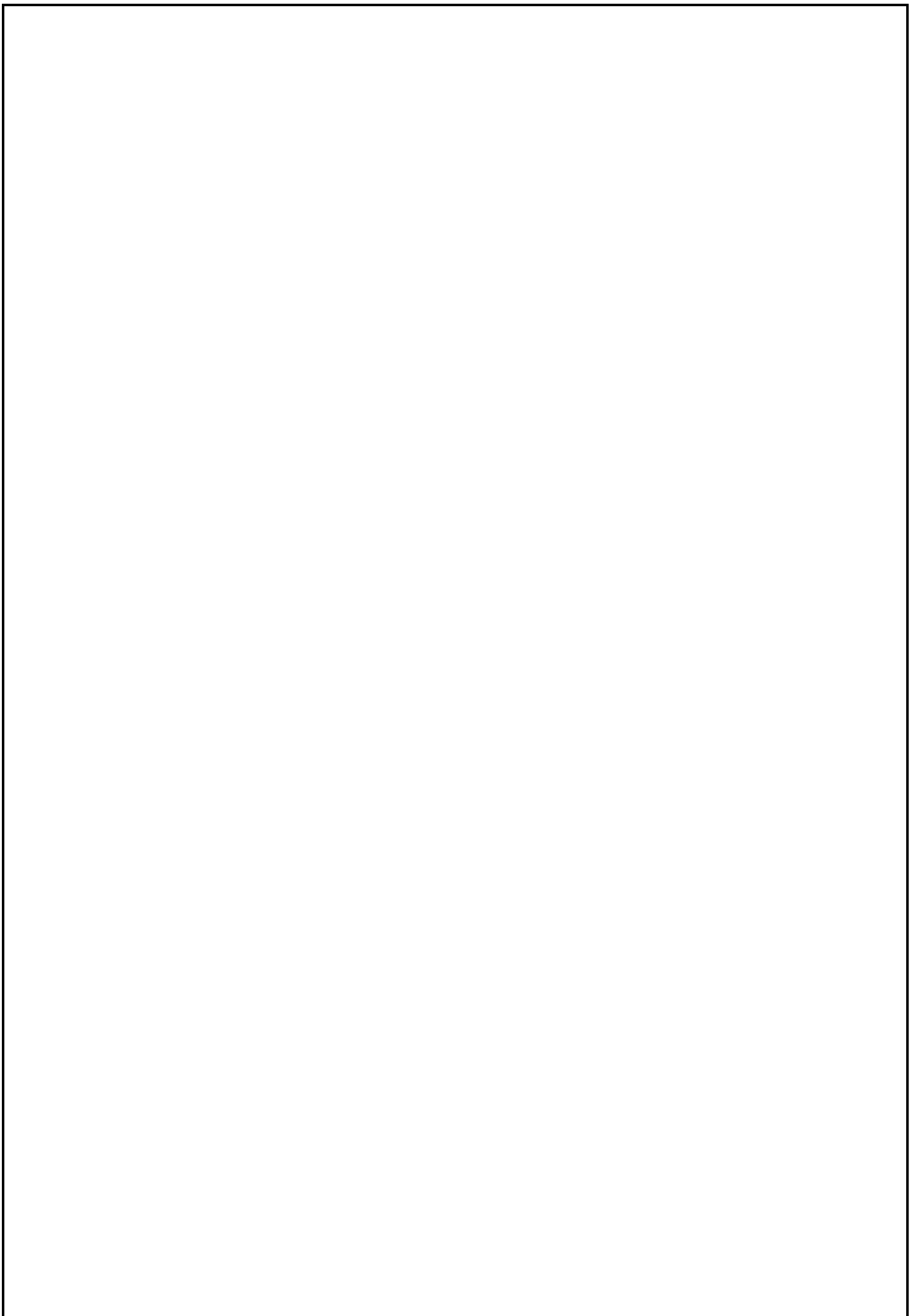
(2) Any regulation made under subsection (1)—

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

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

(c) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction is liable to a fine or to

imprisonment for a period not exceeding one year.					
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5. REFERENCES

Allen, S. (2018) *The Lack of a Fully Intersectional Approach to Gender-Based Violence in South Africa*. Portland State University. doi: 10.15760/honors.531.

Brand South Africa (2014) 'Eighteen years of the world's best Constitution', 11 December. Available at: <https://www.brandsouthafrica.com/people-culture/history-heritage/eighteen-years-of-the-world-s-best-constitution> (Accessed: 7 July 2021).

Graaf, K. (2017) 'The Implications of a Narrow Understanding of Gender-Based Violence', *Feminist Encounters: A Journal of Critical Studies in Culture and Politics*, 1(1), pp. 1–1. doi: 10.20897/femenc.201700.

Mahabeer, P. (2021) "'Powerless and afraid, I felt they let me down": Reflections of a first-year student on gender-based violence at a university in South Africa', *Agenda*, 0(0), pp. 1–13. doi: 10.1080/10130950.2020.1843839.

van Niekerk, T. and Boonzaier, F. (2016) 'Rules and Representations: Social Networks' Responses to Men's Violence against Women in South Africa', in Hydén, M., Gadd, D., and Wade, A. (eds) *Response Based Approaches to the Study of Interpersonal Violence*. London: Palgrave Macmillan UK, pp. 56–76. doi: 10.1057/9781137409546_4.

Singh, K. and Maqhina, M. (2019) 'Madonsela speaks out against gender-based violence as number soar', 16 September. Available at: <https://www.iol.co.za/mercury/news/madonsela-speaks-out-against-gender-based-violence-as-number-soar-33010874> (Accessed: 8 July 2021).