

**REPUBLIC OF SOUTH AFRICA**

**DOMESTIC VIOLENCE AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. .... of ..... 2020) (The English text is the official text of the Bill)*

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

**[B —2020]**

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## GENERAL EXPLANATORY NOTE:

- [            ] Words in bold type in square brackets indicate omissions from existing enactments
- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments
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## BILL

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

- \* further regulate certain definitions;
  - \* further facilitate the obtaining of protection orders against acts of domestic violence;
  - \* introduce obligations on relevant functionaries in the Department of Social Development and the Department of Health to provide certain services to victims of domestic violence;
  - \* to align the provisions of the Domestic Violence Act, 1998 with the provisions of the Protection from Harassment Act, 2011
- and to provide for matters connected therewith.

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

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

1. Section 1 of the Domestic Violence Act, 1998 (hereafter referred to as the principal Act) is hereby amended by -

- (a) the deletion of the definition of “**arm**”;
- (b) the insertion after the definition of “arm” of the following definitions:  
“**child**’ means a person under the age of 18 years;” and  
“**coercive behaviour**’ means an act or pattern or acts of assault, threats, humiliation or other abuse that is used to harm, punish, or cause fear;”

“controlling behaviour” means causing a person to be dependent or subordinate by isolating them from sources of support, exploiting their resources for personal gain or depriving them of the means needed for independence, resistance or escape and regulating their everyday behaviour;”;

(c) the substitution for the definition of “**court**” of the following definition:

“**court**’ means any court contemplated in the Magistrates’ Courts Act, 1944 (Act 32 of 1944) [**or any family court established in terms of an Act of Parliament**];”;

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

“**damage to property**’ means the wilful damaging or destruction of property belonging to a complainant or a related person, or in which the complainant or a related person has [a vested] an interest;”;

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

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

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

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

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

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

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

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

(f) they share or [**recently**] shared the same residence, premises or property within the preceding year;”;

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

“**domestic violence**’ means -

- (a) physical abuse;
- (b) sexual abuse;
- (c) emotional, verbal [and] or psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) **[stalking]** spiritual abuse;
- (h) damage to property;
- (hA) elder abuse;
- (hB) coercive behaviour;
- (hC) controlling behaviour;
- (hD) exposing or subjecting children to behaviour listed in (a) to (hD);
- (i) entry into the complainant's —
  - (i) residence without consent, where the parties do not share the same residence; or
  - (ii) workplace or place where the complainant studies, without consent, where the parties do not share the same workplace or place of study; or
- (j) any other controlling or abusive behaviour **[towards a complainant]**, where such conduct harms, or **[may cause imminent]** inspires the reasonable belief that harm may be caused to, **[the safety, health or wellbeing of]** the complainant or a related person.”;

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

“**economic abuse**’ includes -

- (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 household necessities for the complainant, and mortgage bond repayments or payment of rent in respect of the shared residence **[or accommodation]**; or

- (b) the **[unreasonable]** disposal of household effects or other property in which the complainant has an interest;”;
- (i) the insertion after the definition of “**economic abuse**” of the following definitions:
- “elder abuse” means abusive behaviour in a relationship with an older person. It can include financial abuse, physical abuse, emotional abuse, sexual abuse, as well as controlling behaviour like social isolation or intentional and unintentional neglect;
- ‘electronic communications identity number’ means a technical identification label which represents the origin or destination of electronic communications traffic, as a rule clearly identified by a logical or virtual identity number or address assigned to a customer of an electronic communications service provider (such as a telephone number, cellular phone number, e-mail address with or without a corresponding IP address, web address with or without a corresponding IP address or other subscriber number);
- ‘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 (Act No. 36 of 2005), to provide an electronic communications service;”;
- (j) the substitution for the definition of “**emergency monetary relief**” of the following definition:
- “emergency monetary relief”** means compensation for monetary losses suffered by a complainant before or at the time of the issue of a protection order as a result of the domestic violence, including-
- (a) loss of earnings;
- (b) medical, optical [and] dental and related expenses;
- (c) relocation and accommodation expenses; or
- (d) household necessities;”;
- (k) the substitution for the definition of “**emotional, verbal and psychological abuse**” of the following definition:
- “emotional, verbal [and] or psychological abuse”** means **[a pattern of]** degrading or humiliating conduct towards a complainant or a related person, including -

- (a) **[repeated]** insults, ridicule or name calling;
  - (b) **[repeated]** threats to cause emotional pain; **[or]**
  - (c) the **[repeated]** exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's or a related person's privacy, liberty, integrity or security; or
  - (d) inducing fear;”;
- (l) the substitution for the definition of “**harassment**” of the following definition:  
“**harassment**’ means directly or indirectly engaging in **[a pattern of]** conduct that **[induces the fear of]** the respondent knows or ought to know –
- (a) causes harm or inspires the reasonable belief that harm may be caused to **[a]** the complainant or a related person by unreasonably **[including]** -
    - [(a)](i)** **[repeatedly]** following, watching, pursuing or accosting the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
    - [(b)] (ii)** **[repeatedly making telephone calls or inducing another person to make telephone calls to]** engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means whether or not conversation ensues; or
    - [(c)] (iii)** **[repeatedly]** sending, delivering or causing the delivery of letters, **[telegrams,]** packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person; or
    - (b)** amounts to sexual harassment of the complainant or a related person;”;
- (m) the insertion after the definition of “**harassment**” of the following definition:  
“**harm**’ means any mental, psychological, physical or economic harm;”;
- (n) the substitution for the definition of “intimidation” of the following definition:  
“**intimidation**’ means directly or indirectly uttering or conveying a threat to, or causing a complainant or a related person to receive a threat, which induces fear of imminent harm;”;

- (o) the insertion after the definition of “**member of the South African Police Service**” of the following definition:  
“‘Minister’ means the Cabinet member responsible for the administration of justice;”;
- (p) the substitution for the definition of “**physical abuse**” of the following definition:  
“‘physical abuse’ means any act or threatened act of physical violence towards a complainant or, in the case of a complainant who is a child, abuse as contemplated in section 1 of the Children’s Act, 2005 (Act 38 of 2005);”;
- (q) the insertion after the definition of “**protection order**” of the following definition:  
“‘related person’ means any member of the family or household of a complainant, or any other person in a close relationship to the complainant;”;
- (r) the substitution for the definition of “**sexual abuse**” of the following definition:  
“‘sexual abuse’ means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant or a related person, whether or not such conduct constitutes a sexual offence as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007) or, in the case of a complainant who is a child, constitutes sexual abuse as contemplated in the Children’s Act, 2005;”;
- (s) insertion after the definition of “**sexual abuse**” of the following definition:  
“‘sexual harassment’ means any –
- (a) unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome;
  - (b) unwelcome explicit or implicit behaviour, suggestions, gestures, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances, which a reasonable person having regard to the circumstances would have anticipated that the complainant or related person would be offended, intimidated or humiliated;
  - (c) implied or expressed promise of reward for complying with a sexually-oriented request; or
  - (d) implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request;”;

- (t) the addition of the following definition:  
“‘spiritual abuse’ means the denial or use or practice? of spiritual or religious beliefs and practices to control and dominate a person;
- (u) the deletion of the definition of “**stalking**”; and
- (v) the addition of the following definition:  
“‘weapon’ means –
  - (a) any firearm or any handgun or airgun or ammunition as defined in section 1 of the Firearms Control Act, 2000 (Act No.60 of 2000); or
  - (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.”.

### **Insertion of section 2A in Act 116 of 1998**

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

#### **Services for complainants relating to domestic violence**

“2A (1) A medical practitioner, health service provider, social worker, caregiver, teacher or official employed in government at a public health establishment or any other point of service including facilities providing basic and higher education and training, who in the course of duty becomes aware of, is contacted or approached to assist following an incident of domestic violence must –

- (a) screen, counsel or provide emergency medical treatment as applicable and do a risk assessment as prescribed, before referring the person for further services;
- (b) in the case of an adult, provide the complainant with a prescribed list, containing the names, addresses and contact particulars of accessible shelters and public health establishments;
- (c) in the case of a child render such assistance as is necessary to ensure the safety of the child, including reporting the matter to SAPS and social services and ensuring that medical treatment is obtained;



- (d) render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment;
- (e) 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
- (f) if it is reasonably possible to do so, when dealing with an adult, explain to the complainant the content of such notice in the prescribed manner, including the remedies at his or her disposal in terms of this Act and the right to lodge a criminal complaint, if applicable.”

#### **Duty to report commission of acts of domestic violence**

“2B (1)(a) A person who has knowledge, reasonable belief or suspicion that an act of domestic violence has been committed against a child, person with a disability or an elderly person must report such knowledge, reasonable belief or suspicion immediately to a social worker or police official.

(b) A person who fails to report such knowledge, reasonable belief or suspicion as contemplated in (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(2)(a) A person who has knowledge that an act of domestic violence has been committed against an adult in a domestic relationship must report such knowledge immediately to a social worker or police official.

(b) A person who fails to report such knowledge as contemplated in (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.”

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

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

#### **“Arrest by peace officer without warrant**

3. (1) A peace officer may without warrant arrest any **[respondent]** person at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence **[containing an element of violence against a complainant]** –

(a) against any person in a domestic relationship; or

(b) referred to in section 17(1)(a) of this Act.

(2) A peace officer must –

(a) arrest a person whom is reasonably suspected of having committed an offence where physical violence is involved;

(b) the person against whom the offence has been committed must be referred for a medical examination; and

(c) where necessary arrangements to obtain medical attention must be made.”.

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

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

#### **“Entering of private dwelling for purposes of obtaining evidence**

**3A. If a member of the South African Police Service receives a report that an offence containing an element of violence has allegedly been committed during an incident of domestic violence and the member reasonably suspects that a person who may furnish information regarding that alleged offence is in any private dwelling, that**

member may, despite the proviso to section 26 of the Criminal Procedure Act, 1977 (Act 51 of 1977), without a warrant, enter those premises for the purposes of interrogating that person and obtaining a statement from him or her: Provided that the member—

(a) must first audibly demand admission to the dwelling and must notify the purpose for which he or she seeks to enter that dwelling;

and

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

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

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

##### **“Application for protection order**

4. (1) Any complainant may, in the prescribed manner, apply to the court for a protection order.

(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 -

(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]** Despite 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 or related person]: **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) 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 a person who, in the opinion of the court, is unable to provide the required consent.

(4) **[Notwithstanding]** Despite 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 assistance of a parent, guardian or any other person.

(5) The application referred to in subsection (1) may be brought outside ordinary court hours or on a day which is not an ordinary court day or submit an online affidavit as prescribed, if the court **[is satisfied]** has a reasonable belief that the complainant or a related person is suffering or may suffer **[undue 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) The application and affidavits must be lodged with the clerk of the court who **[shall forthwith]** must immediately submit the application and affidavits to the court.”.

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

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

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

5. (1) The court must as soon as is reasonably possible consider an application submitted to it in terms of section 4(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 may when considering an application referred to in subsection (1), 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 24 of 1987), [when considering an application contemplated in subsection (1), cause an investigation to be carried out] by a Family Advocate contemplated in the Mediation in Certain Divorce Matters Act, 1987, in whose area of jurisdiction that court is, with regard to the welfare of any [minor or dependent] child affected by the proceedings in question, whereupon the provisions of that Act apply with the changes required by the context [.] or

(b) by a designated social worker as contemplated in section 47 of the Children’s Act, 2005, if it appears to that court that a child involved in or affected by proceedings in question is in need of care and protection, whereupon the provisions of that Act apply with the changes required by the context.

(2) If the court is satisfied that there is *prima facie* evidence that-  
(a) the respondent is committing, or has committed an act of domestic violence; and

(b) **[undue hardship]** harm is being or may be suffered by the complainant or a related person as a result of such domestic violence if a protection order is not issued immediately,

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

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

(i) hand at the physical address for service provided, or

(ii) electronically [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].

(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 in the prescribed manner.

(bA) A copy of the application, together with the interim protection order must be –

(i) captured by the clerk of the court in a central electronic repository of protection orders;

(ii) accessible as prescribed within the criminal justice system; and

(iii) sent to the applicant electronically once service has been effected on the respondent.

(c) 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.

(4) If the court does not issue an interim protection order in terms of subsection (2), the court must direct the clerk of the court, sheriff or a peace officer identified by 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.

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

(6) An interim protection order **[shall have no]** is of force and effect **[until it has been served on]** from the time it is issued by the court and the existence and content thereof has 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 clerk of the court, sheriff or peace officer identified by the court must **[forthwith]** immediately cause-

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

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

to be served on the complainant in the prescribed manner and upload the documents referred to in (a) and (b) on the central electronic repository of protection orders in the prescribed manner.”.

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

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

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

### **Attendance of witnesses**

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

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

(3) Any person who is subpoenaed 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 or object specified in the subpoena,  
is guilty of an offence referred to in section 17(2).

### **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 the court is satisfied in terms of section 5(2) that a protection order must be issued as a result of the harassment of the complainant or a related person by means of electronic communications or electronic mail over an electronic communications system of an electronic communications service provider and the identity or address of the respondent is not known, 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 to furnish the court in the prescribed manner by means of an affidavit in the prescribed form with -

- (i) the electronic communications identity number from where the harassing electronic communications or electronic mail 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 electronic communications or electronic mail were or were not sent from the electronic communications identity number of the respondent to the electronic communications identity number of the complainant; and
- (iv) any other information that is available to an electronic communications service provider which may be of assistance to the court to identify the respondent or the electronic communications service provider which provides a service to the respondent.

(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.

(3) (a) The information referred to in subsection (1)(b)(i), (ii) and (iii) 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 either the respondent or complainant or related person; or
- (bb) the requested information is not available in the records of the electronic communications service provider.

(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 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) (i) and (ii), consider the issuing of an interim protection order in terms of section 5(2) against the respondent on the date to which the proceedings have been adjourned.

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

(c) If the court issues an interim protection order, the court should at the same time order the electronic communications service provider to immediately remove the offending content.

(6) An electronic communications service provider must, at least 48 hours before providing the information referred to in subsection (1)(b) to the court, by means of an electronic communication, inform the respondent of the -

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

- (b) reference number of the direction; and
- (c) name and address of the court.

(7) (a) The Director-General: Justice and Constitutional Development must, in consultation with the Director-General: Communications and the electronic communications service providers, compile and maintain a list of electronic communications service providers that can provide the courts with the information referred to in subsection (1)(b) and must contain the following particulars of each such electronic communications service provider:

- (i) The name and address (physical and postal address);
- (ii) the e-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).

(b) An electronic communications service provider must, in the prescribed manner and without undue delay, bring any change of any of the particulars referred to in paragraph (a) to the attention of the Director-General: Justice and Constitutional Development.

(c) The Director-General: Justice and Constitutional Development 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.

(8) (a) The Minister may, after consultation with the electronic communications service providers, by notice in the *Gazette*, prescribe reasonable tariffs of compensation payable to electronic communications service providers for providing the information referred to in subsection (1)(b).

(b) If the court is of the opinion that the complainant is unable to pay the costs involved in the furnishing of the information referred to in subsection (1), the court may, at any time after issuing a direction under subsection (1), 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.

(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 cost involved in the furnishing of the information referred to in subsection (1), including an order directing the State, subject to section 15, to pay such costs within available resources, in the prescribed manner.

(d) The court may, if it has ordered the State to pay the costs referred to in paragraph (c), direct the person affected by the order to refund the costs so paid by the State in terms of paragraph (c), in the prescribed manner.”.

### **Duty in respect of existing orders or reciprocal orders**

**“5C** (1) The court must establish before issuing and or confirming a protection order whether –

(a) the applicant is aware of any other orders, including maintenance orders and other protection orders, against the respondent;

(b) the applicant has any orders, including maintenance orders and protection orders, against him or herself;

(c) any High Court orders, including custody orders, are in place in respect of the applicant or respondent.

(2) Where existing orders are in place, the court –

(a) must ensure that those orders are entered into the court file and that any new orders issued do not contradict the existing orders;

(b) may, where an urgent application is made by a first time applicant for temporary relief from domestic violence, provide such relief until the original order can be varied or amended.’

### **Amendment of section 6 of Act 116 of 1998**

**8.** Section 6 of the principal Act is hereby amended by –

(a) the substitution for the heading of section 6 of the following heading:

**“Issuing of final protection order”;**

(b) the substitution for subsections (1), (2) and (3) of the following subsections and the insertion of subsections (2A) and (2B):

“(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.

(2) If the respondent appears on the return date 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.

(2A) If the respondent appears on the return date in order to oppose the issuing of a protection order, but the complainant does not appear, the court may issue a final protection order in the prescribed form after hearing the matter and -

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

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

(c) if there are disputes of fact in the two versions before it, the court may extend the validity of the interim protection order and postpone the matter for the hearing of oral evidence.

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

(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 may extend the validity of the interim protection order and postpone the matter for the hearing of oral evidence

(3) The court may, on its own accord or **[on]** at the request of the complainant or related person, **if it is of the opinion that it is just or desirable to do so,** order that in the examination of witnesses, including the complainant or related person, a respondent who is not represented by a legal representative -

(a) is not entitled to cross-examine directly a person who is in a domestic relationship with the respondent; and

(b) **[shall]** must put any question to such a witness by stating the question to the court,

and the court is to repeat the question accurately to the respondent.”;

and

(c) the substitution for subsections (5), (6) and (7) of the following subsections:

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

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

(b) a certified copy of such order, and the original warrant of arrest contemplated in section 8(1)(a), **[to]** must be served on the complainant, in the prescribed manner by the clerk of the court, sheriff or peace officer identified by the court.

(6) 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.

(7) Subject to the provisions of section 7(7), a protection order issued in terms of this section has effect and 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.”.

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

9. Section 7 of the principal Act is hereby amended by –

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

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

- (a) committing or attempting to commit any act of domestic violence;
- (b) enlisting the help of another person 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 (c) from entering or remaining in the shared residence or a specified part of the shared residence; or
- (h) committing any other act as specified in the protection order, including the distribution of any specified communication, whether electronically or otherwise, on social media or elsewhere.

(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 an order -

- (a) to seize any arm or dangerous weapon in the possession or under the control of the respondent, as contemplated in section 9; and
- (b) that a peace officer must accompany the complainant to a specified place to assist with arrangements regarding the collection of personal property;  
or
- (c) which recommends that the complainant approaches the relevant police station to investigate the matter with the view to the possible institution of a criminal prosecution against the respondent.”;

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

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

(b) The court may issue any directions to ensure that the complainant's or related person's physical, home and work address is 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 non-disclosure of the complainant's or related person's physical, home and work address will be of effect until a children's court inquiry into the matter has been held.”; and

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

“(7) (a) The court may not refuse –

(i) to issue a protection order; or

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

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

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

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

**10.** Section 8 of the principal Act is hereby amended by –

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



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

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

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

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

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

(c) If the member concerned is of the opinion that there are insufficient grounds for arresting the respondent in terms of paragraph (b), he or she 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 handed the original notice to the respondent and that he or she 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 or related person is suffering harm or may suffer **[imminent]** harm, as contemplated in subsection (4)(b), the member of the South African Police Service must take into account -

- (a) the risk to the safety, health or wellbeing of the complainant or related person;
- (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
- (d) the nature and extent of the harm previously suffered in the domestic relationship by the complainant or related person.”.

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

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

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

9. (1) The court must order a member of the South African Police Service to seize any **[arm or dangerous]** weapon in the possession or under the control of a respondent, regardless of the requirements of the respondent's employment to possess such weapon, if the court is satisfied on the evidence

placed before it, including any affidavits supporting an application referred to in section 4 (1), that -

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

- (3) Any **[dangerous]** 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, in the prescribed manner, inform the **[National Commissioner of the South African Police Service]** relevant station commander thereof.

(b) The **[National Commissioner of the South African Police Service]** relevant station commander must, on receipt of the information contemplated in paragraph (a), —

- (i) determine whether the respondent holds a licence, permit, competency certificate or other authorisation in terms of the Firearms Control Act, 2000, for any firearm or ; and
- (ii) in terms of section 102 of the Firearms Control Act, 2000, determine whether the person is unfit to possess a firearm;”.

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

12. Section 10 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

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

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

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

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

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

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

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

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

- (a) the complainant permanently or temporarily resides, carries on business or is employed;
  - (b) the respondent permanently or temporarily resides, carries on business or is employed; or
  - (c) the cause of action arose,
- has jurisdiction to grant a protection order as contemplated in this Act.

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

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

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

“(1) Service of any document in terms of this Act must **[forthwith]** be effected immediately in the prescribed manner by the clerk of the court, the sheriff or a peace officer, or as the court may direct.”.

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

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

##### **“Orders as to costs of service and directions**

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

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

(a) the service of any process or documents; and

(b) obtaining the information contemplated in section 5B(1).”.

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

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

##### **“Appeal and review**

16. The provisions in respect of appeal and review contemplated in the Magistrates’ Courts Act, 1944 (Act 32 of 1944), and the **[Supreme Court Act, 1959 (Act 59 of 1959)]** Superior Courts Act, 2013 (Act 10 of 2013), apply to any proceedings in terms of this Act.”.

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

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

**“Offences**

(1) Notwithstanding the provisions of any other law, any person who -

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

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

(c) fails to comply with any direction in terms of the provisions of section 11(2)(b); or

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

is guilty of an offence and liable on conviction—

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

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

(bb) if a second or subsequent offender, to imprisonment for a period not exceeding ten years; and

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

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

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

(2) Any person who contravenes or fails to comply with the provisions of section 5A(3) is guilty of an offence and is liable on conviction—

(a) in the case of a first offender, to a fine or to imprisonment not exceeding three months; or

(b) in the case of a second or subsequent offender, to a fine or to imprisonment not exceeding six months.

(3) (a) Any electronic communications service provider or employee of an electronic communications service provider who -

- (i) 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 section 5B(3)(a) or such extended period allowed by the court in terms of section 5B(3)(b);
- (ii) makes a false statement in an affidavit referred to in section 5B(1)(b), (3)(b) or (4)(b) in a material respect; or
- (iii) fails to comply with section 5B(6),  
is guilty of an offence.

(b) Any electronic communications service provider or employee of an electronic communications service provider who is convicted of an offence referred to in paragraph (a), is liable, in the case of -

- (i) an electronic communications service provider, to a fine not exceeding R10 000; or
- (ii) an employee of an electronic communications service provider to a fine or to imprisonment for a period not exceeding six months.”.

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

**19.** Section 18 of the principal Act is hereby amended by –

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

“(1) No prosecutor **[shall] may** -

- (a) refuse to institute a prosecution; or
- (b) withdraw a charge,

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

- (i) involving the infliction of grievous bodily harm or a dangerous wound; or
- (ii) where the complainant is threatened with a firearm,

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 32 of 1998), or a senior member of the prosecuting authority designated thereto in writing by such a Director.

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

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

“(4) (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 **[Independent Complaints Directorate]** Civilian Secretariat for the Police, established in terms of that Act, must **[forthwith]** be informed immediately of any such failure reported to the South African Police Service.

(b) Unless the **[Independent Complaints Directorate]** Civilian Secretariat for the Police, directs otherwise in any specific case, the South African Police Service must institute disciplinary proceedings against any member who allegedly failed to comply with an obligation referred to in paragraph (a).

(5) (a) The National Director of Public Prosecutions must submit any prosecution policy and policy directives determined or issued in terms of subsection (2) to Parliament, and the first policy and directives so determined or issued, must be submitted to Parliament within six months of the commencement of this Act.

(b) The National Commissioner of the South African Police Service must submit any national instructions issued in terms of subsection (3) to Parliament, and the first instructions so issued, must be submitted to Parliament within six months of the commencement of this Act.

(c) The **[Independent Complaints Directorate]** Civilian Secretariat for the Police, must, every six months, submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4)(a), and setting out the recommendations made in respect of such matters.

(d) The National Commissioner of the South African Police Service must, every six months, submit a report to Parliament regarding -

- (i) the number and particulars of complaints received against its members in respect of any failure contemplated in subsection (4)(a);
- (ii) the disciplinary proceedings instituted as a result thereof and the decisions which emanated from such proceedings; and
- (iii) steps taken as a result of recommendations made by the **[Independent Complaints Directorate]** Civilian Secretariat for the Police.”.

#### **Insertion of section 18A in Act 116 of 1998**

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

##### **“Directives for clerks of the court**

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

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

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

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

**Directives for the Departments of Health, Social Development, Basic and Higher Education and Training and Communications**

**18B** The Directors-General: Health, Social Development, Basic and Higher Education and Training and Communications must in consultation with the Ministers of Health, Social Development, Basic and Higher Education and Training and Communications after consultation with the Director-General Justice and Constitutional Development, the National Director of Public Prosecutions and the National Commissioner of the South African Police Service, publish in the Gazette directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all medical practitioners, social workers and other relevant persons when dealing with domestic violence cases, in order to achieve the objects of this Act including –

- (a) equipping public health officials, medical practitioners, nurses, social workers, educators and learners with knowledge on preventative measures;
- (b) public communication on the manner in which reports of domestic violence should be dealt with in general;
- (c) the manner and time limit within which acts of domestic violence are to be reported to the SAPS;
- (d) the manner that a child victim or learner or a child who has been exposed to domestic violence should be protected and referred for other services if necessary;
- (e) the manner in which a child or learner who has perpetrated an act of domestic violence should be dealt with;
- (f) designation of accredited shelters;
- (g) set standards and minimum conditions for provision of services in accredited shelters; and
- (h) the manner in which assistance in the investigation and prosecution of acts of domestic violence generally must be provided;”

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

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

**“Regulations**

**19. (1) The Minister [of Justice] may make regulations regarding -**  
**(a) any form required to be prescribed in terms of this Act;**  
**[(b) any matter required to be prescribed in terms of this Act; and**  
**(c) any other matter which the Minister deems necessary or expedient to be prescribed in order to achieve the objects of this Act.**

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

**(b) financial assistance to be provided by the State —**  
**(i) to a complainant or respondent who does not have the means to pay for fees of any service in terms of this Act; and**  
**(ii) to a witness who attends any proceedings in terms of this Act;**  
**(c) the granting of legal aid at State expense in appropriate cases in consultation with the Legal Aid South Africa to a child to assist him or her with an application for a protection order in terms of this Act;**  
**(d) any matter required to be prescribed in terms of this Act; and**  
**(e) any other matter which the Minister deems necessary or expedient to be prescribed in order to achieve the objects of this Act.**

**(2) Any regulation made under subsection (1) -**  
**(a) must be submitted to Parliament prior to publication thereof in the Gazette;**

- (b) which may result in expenditure for the State, must be made in consultation with the Cabinet member responsible for finance; and
- (c) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding one year.”.

**Amendment of Schedule 2 to Act 60 of 2000, as amended by section 22 of Act 17 of 2011**

**21.** Schedule 2 to the Firearms Control Act, 2000 is hereby amended by the substitution for paragraph (e) of Item 7 of the following paragraph:

- “(e) in terms of **[section 18(1)(a) of]** the Domestic Violence Act, 1998 (Act No. 116 of 1998 or the Protection from Harassment Act, 2011 (Act No. 17 of 2011).”.

**Short title and commencement**

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