

REPUBLIC OF SOUTH AFRICA

DOMESTIC VIOLENCE ACT AMENDMENT BILL

*(As presented by the Portfolio Committee on Justice and Correctional Services
(National Assembly), after consideration of the Domestic Violence Amendment Bill
[B 20-2020])
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 20B—2020]

ISBN 978-1-4850-0719-7

No. of copies printed350

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.

BILL

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

- amend and insert certain definitions;
- further provide for the manner in which acts of domestic violence and matters related thereto, must be dealt with;
- further regulate protection orders in response to acts of domestic violence;
- amend provisions of certain laws; and
- provide for matters connected therewith.

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

Insertion of Arrangement of Sections in Act 116 of 1998

1. The following Arrangement of Sections is hereby inserted in the Domestic Violence Act, 1998 (Act No. 116 of 1998) (hereafter referred to as the principal Act): 5

“ARRANGEMENT OF SECTIONS

<i>Sections</i>	
1. Definitions and interpretation	
2. Duty to assist and inform complainant of rights	
2A. Obligations of functionaries relating to domestic violence	10
2B. Obligation to report domestic violence and to provide information	
3. Arrest by peace officer without warrant and assistance to complainant	
3A. Entering of private residence for purposes of obtaining evidence	
4. Application for protection order	
4A. Domestic violence safety monitoring notice	15
5. Consideration of application and issuing of interim protection order	
5A. Attendance of witnesses	
5B. Electronic communications service provider to furnish particulars to court	
5C. Existing and reciprocal orders or applications	
6. Issuing of final protection order	20
6A. Integrated electronic repository for domestic violence protection orders	
7. Court’s powers in respect of protection order	

8. Warrant of arrest upon issuing of protection order	
9. Seizure of weapons	
10. Variation or setting aside of protection order	
11. Attendance of proceedings and prohibition of publication of certain information	
12. Jurisdiction	5
13. Service of documents	
14. Legal representation	
15. Orders as to costs of service and directions	
16. Appeal and review	
17. Offences	10
18. Application of Act by prosecuting authority and members of South African Police Service	
18A. Directives for clerks of the court	
18B. Directives for Departments of Health, Social Development, Basic Education, Higher Education and Training and Communications and Digital Technologies	15
19. Regulations	
20. Amendment of laws	
21. Repeal of laws and savings	
22. <u>Short title and commencement</u> ".	

Substitution of section 1 of Act 116 of 1998, as amended by section 10 of Act 31 of 2008 20

2. The following section is hereby substituted for section 1 of the principal Act:

“Definitions and interpretation

1. (1) In this Act, unless the context indicates otherwise—	
[‘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);]	25
‘capture’ means to store documents in the—	
(a) manner; and	
(b) format,	30
in the integrated electronic repository, as may be prescribed in terms of section 6A;	
‘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;	35
‘child’ means a person under the age of 18 years;	
‘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;	40
‘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;	45
‘complainant’ means any person who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence, including any child in the care of the complainant;	50
‘controlling behaviour’ means behaviour towards a complainant that is aimed at making the complainant dependent on, or subservient to, the respondent and includes—	
(a) isolating him or her from sources of support;	55

- (b) exploiting his or her resources or capacities for personal gain;
- (c) depriving him or her of the means needed for independence, resistance or escape; or
- (d) regulating his or her everyday behaviour;
- ‘court’** means any magistrate’s court for a district contemplated in the Magistrates’ Courts Act, 1944[**(Act 32 of 1944)**];
- ‘damage to property’** means—
- (a) the wilful damaging or destruction of property; or
- (b) threats to damage or destroy property,
belonging to, or which is in the possession or under the control of, the complainant, or in which the complainant has a vested interest;
- ‘dangerous weapon’** means any weapon as defined in section 1 of the Dangerous Weapons Act, 1968 (Act 71 of 1968);
- ‘Director-General’** means the Director-General: Justice and Constitutional Development;
- ‘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;
- ‘disclose by means of an electronic communications service’** means to—
- (a) send an electronic communication to a person who is the intended recipient of the electronic communication or any other person;
- (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;
- (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;
- (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; 5
- or
- (j) any other **[controlling or abusive]** behaviour of an intimidating, threatening, abusive, degrading, offensive or humiliating nature towards a complainant,
- where such conduct harms, or **[may cause imminent harm to, the safety, health or wellbeing of]**inspires the reasonable belief that harm may be caused to the complainant; 10
- '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 education expenses, household necessities for the complainant, and mortgage bond repayments or payment of rent in respect of the shared residence or accommodation; 15
 - (b) the **[unreasonable]** disposal of household effects or other property in which the complainant has an interest, without the complainant's permission; 20
 - (c) the use of financial resources of a complainant, without the complainant's permission; or
 - (d) the coercing of the complainant to— 25
 - (i) relinquish control over assets or income; or
 - (ii) sign a legal document that would enable the complainant's finances to be managed by another person;
- '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); 30
- '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; 35
- '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; 45
- 'electronic communications identity number'** means a technical identification label which represents the origin or destination of electronic communications; 50
- '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;
- '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 the Electronic Communications Act, 2005; 55
- '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; 60

‘emergency monetary relief’ means—

- (a) 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)](i) loss of earnings; 5
 - [(b)](ii) medical, optical, [and] dental and related expenses;
 - [(c)](iii) relocation and accommodation expenses; [or]
 - [(d)](iv) expenses for acquiring household necessities;
 - [(e)](v) education expenses; or
 - [(f)](vi) expenses in respect of psychosocial services and counselling; 10
- and
- (b) maintenance of any child in the care of the complainant, pending finalisation of maintenance proceedings in terms of the Maintenance Act, 1998 (Act No. 99 of 1998);

‘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—

- (a) [repeated] insults, ridicule or name calling; 15
- (b) [repeated] threats to cause emotional pain; [or] 20
- (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;
- (d) the wilful damaging or destruction of any property in close vicinity of a complainant; 25
- (e) to harm or threaten to harm a household pet or other animal, whose welfare affects a complainant’s well-being;
- (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; 30
- (g) to threaten the complainant with the death or injury of another person or damage of another person’s property; or
- (h) threats to commit suicide or self-harm; 35

‘expose a child to domestic violence’ means to intentionally cause a child to—

- (a) see or hear domestic violence; or
- (b) experience the effects of domestic violence;

‘functionary’, for purposes of section 2A, means—

- (a) a medical practitioner, health care personnel, a social worker, an official in the employ of a public health establishment, an educator or a care-giver; and 40
- (b) any other person—
 - (i) belonging to a class or category of persons; or
 - (ii) who is in the employ of any class or category of entities, designated by the Minister by notice in the *Gazette*; 45

‘harassment’ means [engaging in a pattern of conduct that induces the fear of harm to a complainant including]—

- (a) [repeatedly] the unreasonable—
 - (i) following, watching, pursuing or accosting of the complainant or a related person; or 50
 - (ii) loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be, which inspires the belief in the complainant that he or she or a related person may be harmed or their property may be damaged; 55
- (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— 60
 - (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; 5
- (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; 10
- (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; 15
- (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 20
 - (iii) inspires the belief in the complainant that he or she or a related person may be harmed or their property may be damaged; or
- (i) to disclose an electronic communication, or to make a communication available, to another person concerning a complainant, which— 25
- (i) contains information of a private nature;
 - (ii) violates or offends the sexual integrity or dignity of a complainant;
 - (iii) is abusive, degrading, offensive or humiliating; or 30
 - (iv) inspires the belief in the complainant that he or she or a related person may be harmed or their property may be damaged;
- '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; 35
- 'integrated electronic repository'** means the integrated electronic repository for domestic violence protection orders, established in terms of section 6A; 40
- 'intimidation'** means [**uttering or conveying a threat to, or causing a complainant to receive a threat, which induces fear**]—
- (a) physical violence, or damage to property belonging, to a complainant or any other person; 45
 - (b) threats of physical violence, or damage to property belonging, to a complainant or any other person; or
 - (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; 50
- 'medical practitioner'** means a person registered as a medical practitioner in terms of the Health Professions Act, 1974 (Act No. 56 of 1974); 55
- '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);
- 'Minister'** means the Cabinet member responsible for the administration of justice; 60
- 'official in the employ of a public health establishment'** means a person who—

- (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
- (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; 5
- ‘peace officer’** means a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- ‘person in a close relationship’** means a relationship between the complainant and any other person, which the court, with regard to the following criteria— 10
- (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 15
- (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; 20
- (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— 25
- (i) any drug as defined in section 1(1) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992);
- (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 30
- (ii) any chemical or other substance that is harmful to the health or wellbeing of the complainant, to a complainant, without the complainant’s permission; or
- (d) withholding or threatening to withhold a complainant’s medication;
- ‘prescribed’** means prescribed in terms of a regulation made under section 19; 35
- ‘protection order’** means an order issued in terms of section 5 or 6 but, in section 6, excludes an interim protection order;
- ‘related person’** means any member of the family or household of a complainant, or a person in a close relationship with the complainant; 40
- ‘related person abuse’** means to—
- (a) threaten the complainant with causing of physical violence to, or the damage of property of, a related person;
- (b) threaten a related person with physical violence or causing damage to the property of, such a person; 45
- (c) threaten a related person with causing of physical violence to, or the damage of property of, a complainant; or
- (d) commit an act of physical violence against, or cause damage to property of, a related person, 50
- where such actions can in the circumstances be regarded as abuse to cause harm to the complainant;
- ‘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; 55
- ‘respondent’** means any person who is or has been in a domestic relationship with a complainant and who—
- (a) has committed or allegedly committed; or
- (b) has used or allegedly used a third party actor to commit or allegedly to commit, 60
- an act of domestic violence against the complainant;

- ‘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 Matters) Amendment Act, 2007 (Act No. 32 of 2007); 5
- ‘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; 10 15
 - (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 to comply with a sexually oriented request; 20
- ‘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;
- ‘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); 25
- ‘spiritual abuse’** means—
- (a) advocating hatred against the complainant because of his or her religious or spiritual beliefs, that constitutes incitement to cause harm to the complainant; 30
 - (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 35
 - (c) manipulating the complainant’s religious or spiritual convictions and beliefs to justify or rationalise abusing the complainant;
- [‘stalking’ means repeatedly following, pursuing, or accosting the complainant;]**
- ‘third party actor’** means any person— 40
- (a) who is not or has not been in a domestic relationship with a complainant;
 - (b) who conspired with, was procured by, or used by, the respondent to commit an act of domestic violence against the complainant; and
 - (c) who— 45
 - (i) committed or allegedly committed an act of domestic violence against the complainant; or
 - (ii) aided or allegedly aided the respondent in the commission of an act of domestic violence against the complainant;
- ‘this Act’** includes the regulations[.]; and 50
- ‘weapon’** means—
- (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
 - (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. 55
- (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. 60

(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).

(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.”

Insertion of sections 2A and 2B in Act 116 of 1998

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

“Obligations of functionaries relating to domestic violence

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—

(a) must without delay—

(i) complete a report in the prescribed form setting out the reasons for such belief or suspicion; and

(ii) in the prescribed manner submit the report to—

(aa) a social worker; or

(bb) a member of the South African Police Service;

(b) must conduct a risk assessment as prescribed in terms of section 18B; and

(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.

(2) A functionary referred to in subsection (1)—

(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

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

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.”

Substitution of section 3 of Act 116 of 1998

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

“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. 5 10

(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. 15

(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; 20
- (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; 25
 - (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
 - (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 30
- (c) provide such further assistance as may be prescribed in terms of section 18B.”. 35

Insertion of section 3A in Act 116 of 1998

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

“Entering of private residence for purposes of obtaining evidence

3A. (1) If a member of the South African Police Service—

- (a) receives a report that an offence containing an element of physical violence has allegedly been committed during an incident of domestic violence; and 40
- (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. 45

(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 50
- (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.”. 55

Substitution of section 4 of Act 116 of 1998

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

“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. 5

(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, 10
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— 15

(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 20
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—** 25

(a) **a minor;** 30

(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— 35

(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. 40

(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. 45

(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 hardship] harm**, if the application is not dealt with immediately. 50

(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. 55

(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.”.

Insertion of sections 4A in Act 116 of 1998

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

“Domestic violence safety monitoring notice

- 4A.** (1) A complainant, who shares a joint residence with the respondent, may— 5
- (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 before the court issues a final protection order or discharges the matter in terms of section 6; or 10
- (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— 15
- (a) with the clerk of the court; or
- (b) electronically, by submitting the application to an electronic address, 20
- of the court having jurisdiction.
- (3) Supporting affidavits by persons who have knowledge of the matter concerned may accompany the application. 20
- (4) The clerk of the court must as soon as is reasonably possible submit an application referred to in subsection (2) to the court.
- (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. 25
- (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— 30
- (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, 35
- 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 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— 40
- (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; 45
- (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— 50
- (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. 55
- (9) The clerk of the court must—
- (a) in the prescribed form and manner— 60
- (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 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.”

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

8. The following section is hereby substituted for section 5 of the principal Act: 25

“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(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. 30

(1A) Where circumstances permit, a court that considers an application referred to in subsection (1), may cause an investigation to be carried out— 35

(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 40

(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. 45

(2) If the court is satisfied that— 50

(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 55

(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 proceedings contemplated in subsection (1), issue an interim protection order in the prescribed form against the respondent, in the prescribed manner]. 5

(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; 10
- (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. 15

(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. 20

(c) The clerk of the court must, upon the issuing of an interim protection— 25

- (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. 30

(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. 35

(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. 40

(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. 45

(b) The clerk of the court must capture the written notice in the integrated electronic repository. 50

(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]— 55

- (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— 60

- [(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.

(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.”.

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

9. 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) 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.

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 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; 5
- (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 10
- (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. 15

(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. 20

(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. 25

(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 30
- (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 35
 - (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— 40

- (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 45
- (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 on the date to which the proceedings have been adjourned. 50

(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). 55

(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. 60

(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). 5

(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. 10

(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. 15

(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— 20

- (a) information that was provided to the court;
- (b) reference number of the direction; and
- (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). 25

(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). 30

(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. 35

(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. 40

(9) The Minister must, by notice in the *Gazette*, prescribe reasonable tariffs of compensation payable to electronic communications service providers for— 45

- (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). 50

(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). 55

(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, 60
- 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. 5

(d) The court may, if it has ordered the State to pay the costs referred 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); 10

(b) makes a false statement in an affidavit referred to in subsection (1)(b), (3)(b), (6)(b) or (c), in a material respect; 15

(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), is guilty of an offence. 20

(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. 25

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. 30

(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; 35

(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; 40

(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.”. 45 50

Substitution of section 6 of Act 116 of 1998

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

“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— 55

(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—

(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.

(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]the 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—
 (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.”.

Insertion of section 6A in Act 116 of 1998 30

11. The following section is hereby inserted in the principal Act after section 6:

“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 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; 5
- (e) the standards governing the information security of the integrated electronic repository;
- (f) the operation of the integrated electronic repository;
- (g) the processing of information using the integrated electronic repository; 10
- (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; 15
- (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.”. 20

Amendment of section 7 of Act 116 of 1998

12. Section 7 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) for the following subsections:
 - “(1) The court may, by means of a protection order referred to in section 5 or 6, prohibit the respondent from— 25
 - (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; 30
 - (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]** 35
 - (gA) disclosing any electronic communication or making available any communication, as may be specified in the protection order; or 40
 - (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— 45
 - (a) an order— 45
 - (i) to seize any **[arm or dangerous]** weapon in the possession or under the control of the respondent, as contemplated in section 9; and
 - [(b)](ii)** that a peace officer must accompany the complainant to a specified place to assist with arrangements regarding the collection of personal property; or 50
 - (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.”; 55
- (b) by the insertion of the following subsection after subsection (4):
 - “(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 60

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 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.”;

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

“(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.”; and

(d) by 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, 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.”.

Amendment of section 8 of Act 116 of 1998

13. Section 8 of the principal Act is hereby amended—

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

“(1) Whenever a court issues a protection order in terms of section 5(2) or 6, 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) by the substitution for subsections (4) and (5) of the following subsections:
- “(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 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] 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
- (d) the nature and extent of the harm previously suffered in the domestic relationship by the complainant or a related person.”.

Substitution of section 9 of Act 116 of 1998

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

“Seizure of [arms and dangerous] weapons 45

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—
- (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
- (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, 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.”.

Amendment of section 10 of Act 116 of 1998

15. Section 10 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(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.

(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.

(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

16. Section 11 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 5

“(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.”. 10

Amendment of section 12 of Act 116 of 1998

17. Section 12 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections: 15

“(1) Any court within the area in which—
 (a) the complainant permanently or temporarily resides, studies, 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).” 20 25

Amendment of section 13 of Act 116 of 1998

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

“(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 officer[, or as the court may direct]. 30
 (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 35
 (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.”. 40

Substitution of section 15 of Act 116 of 1998

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

“[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 any party if it is satisfied that such party has acted frivolously, vexatiously or unreasonably. 45

(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— 50

- (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).”.

Substitution of section 16 of Act 116 of 1998

20. The following section is hereby substituted for section 16 of the principal Act: 5

“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. 10 of 2013), apply to any proceedings in terms of this Act.”. 10

Amendment of section 17 of Act 116 of 1998

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

“Offences

17. (1) Notwithstanding the provisions of any other law, any person who— 15

- (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 in section 8(4)(a), wilfully makes a false statement in a material respect, 20

is guilty of an offence and liable on conviction—

- (i) in the case of an offence referred to in paragraph (a)— 25
 (aa) if it is a first conviction, to a fine or imprisonment for a 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)— 30

(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. 35

(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. 40

(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(11)(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 45

(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.”. 50

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

22. Section 18 of the principal Act is hereby amended—

(a) by 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 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.

(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) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(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.”.

Insertion of sections 18A and 18B in Act 116 of 1998

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

“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.

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

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. 5
- (2) Without limiting the scope of the directives contemplated in subsection (1), the directives must—
- (a) prescribe services to be provided to a complainant who is a child, a person with a disability or an older person; 10
- (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; 15
- (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; 20
- (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; 25
- (f) provide for the designation of accredited shelters;
- (g) prescribe standards and minimum conditions for the provision of services in accredited shelters; and 30
- (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.”. 35

Substitution of section 19 of Act 116 of 1998

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

“Regulations

- 19.** (1) The Minister [of Justice] may make regulations regarding— 40
- (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)— 45
- (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.] 50
- (b) financial assistance to be provided by the State— 55
- (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. 5
- (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 10
 - (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.”. 15

Substitution of section 20 of Act 116 of 1998

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

“Amendment of laws

20. The laws mentioned in the Schedule are amended to the extent indicated in the third column of the Schedule.”. 20

Period within which directives and regulations must be submitted to Parliament

26. (1) (a) The directives referred to in sections 18A and 18B of the Domestic Violence Act, 1998 (Act No. 116 of 1998), must be submitted to Parliament within 12 months from the date of the publication of this Act in terms of section 81 of the Constitution of the Republic of South Africa, 1996. 25

(b) A Director-General who is in terms of section 18A or 18B of the Domestic Violence Act, 1998, responsible for the issuing of directives must, in the event of a failure to submit the directives to Parliament, within 12 months from the date of the publication of this Act, report such failure and the reasons for such failure to Parliament before the end of the month following upon the month during which the 12 month period expires and thereafter at such intervals as Parliament may determine. 30

(c) The failure to submit the directives referred to in paragraph (a) to Parliament within 12 months from the date of the publication of this Act does not affect the validity of any such directives that are submitted to Parliament after the expiration of the said period and thereafter issued. 35

(2) (a) The Minister must, in terms of section 19(2) of the Domestic Violence Act, 1998, submit regulations that are necessary or required to be made for the proper implementation and administration of that Act to Parliament within 12 months from the date of the publication of this Act in terms of section 81 of the Constitution of the Republic of South Africa, 1996. 40

(b) The Minister must, in the event of a failure to submit the regulations referred to in paragraph (a) to Parliament, within 12 months from the date of the publication of this Act, report such failure and the reasons for such failure to Parliament before the end of the month following upon the month during which the 12 month period expires and thereafter at such intervals as Parliament may determine. 45

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

Short title and commencement 50

27. (1) This Act is called the Domestic Violence Act Amendment Act, 2021 and, subject to subsection (2), comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Section 26 comes into operation on the date of the publication of this Act in terms of section 81 of the Constitution of the Republic of South Africa, 1996. 55

SCHEDULE
LAWS AMENDED

(Section 20)

No. and year of law	Short title	Extent of repeal or amendment
Act No. 51 of 1977	Criminal Procedure Act, 1977	Section 40 of the Criminal Procedure Act, 1977, is hereby amended by— (a) the substitution in subsection (1) for paragraph (q) of the following paragraph: “(q) who is [reasonably suspected] on reasonable grounds believed of having committed an act of domestic violence as contemplated in section 1 of the Domestic Violence Act, 1998, which constitutes an offence in respect of which violence is an element [.] or”; and (b) by the addition to subsection (1) of the following paragraph: “(r) who is reasonably suspected of having committed an act of domestic violence as contemplated in section 1 of the Domestic Violence Act, 1998, which constitutes an offence in terms of any law.”.
Act No. 60 of 2000	Firearms Control Act, 2000	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).”.
Act No. 17 of 2011	Protection from Harassment Act, 2011	The Protection from Harassment Act, 2011, is hereby amended by— (a) the substitution for subsection (2) of section 1 of the following subsection: “(2) This Act does not prevent a person who may apply for relief against harassment [or stalking] in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), from applying for relief in terms of this Act.”; and (b) the substitution in subsection (5) of section 10 for paragraph (a) of the following paragraph: “(a) Provided that the complainant is not in possession of or not in the process of applying for a protection order against harassment [or stalking] as provided for in the Domestic Violence Act, 1998 (Act No. 116 of 1998), the court may not refuse— (i) to issue a protection order; or (ii) to impose any condition or make any order, which it is competent to impose or make under this section, merely on the grounds that other legal remedies are available to the complainant.”.
Act No. 10 of 2013	Superior Courts Act, 2013	The Superior Courts Act, 2013, is hereby amended by the substitution for subsection (1) of section 47 of the following subsection: “(1) [Notwithstanding any other law] Except for an application made in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), no civil proceedings by way of summons or notice of motion may be instituted against any judge of a Superior Court, and no subpoena in respect of civil proceedings may be served on any judge of a Superior Court, except with the consent of the head of that court or, in the case of a head of court or the Chief Justice, with the consent of the Chief Justice or the President of the Supreme Court of Appeal, as the case may be.”.

Printed by Creda Communications

ISBN 978-1-4850-0719-7