

DOMESTIC VIOLENCE AMENDMENT BILL [cleaned up version]

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 by certain functionaries, persons and Government departments;
- further regulate obtaining of protection orders in response to acts of domestic violence;
- delete and amend provisions of certain laws; and
- provide for matters connected therewith.

ARRANGEMENT OF SECTIONS

Sections

1. Definitions
2. Duty to assist and inform complainant of rights
 - 2A. Obligations of functionaries relating to domestic violence
 - 2B. Obligation to report domestic violence and to provide information
3. Arrest by peace officer without warrant
 - 3A. Entering of private dwelling for purposes of obtaining evidence
4. Application for protection order
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 orders or reciprocal orders
6. Issuing of final protection order
 - 6A. Establishment of an integrated electronic repository for domestic violence protection orders and related matters
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
13. Service of documents
14. Legal representation
15. Orders as to costs of service and directions
16. Appeal and review
17. Offences
18. Application of Act by prosecuting authority and members of South African Police Service
 - 18A. Directives for clerks of the court
 - 18B. Directives by Departments of Health, Social Development, Basic Education, Higher Education and Training and Communications and Digital Technologies
19. Regulations
20. Amendment of laws
21. Repeal of laws and savings
22. Short title and commencement

1. Definitions. —In this Act, unless the context indicates otherwise—

“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;

“coercive behaviour” means any abusive conduct or acts of force, intimidation or undue pressure intended to cause a complainant or a related person to act, not to act, or be subjected to certain acts against his or her will;

“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;

“controlling behaviour” means causing the complainant or a related person to be dependent on or subordinate to the respondent by—

- (a) isolating him or her from sources of support;
- (b) exploiting his or her resources 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 No. 32 of 1944);

“damage to property” means the wilful damaging or destruction of property, including those belonging to a complainant or a related person which causes harm to a complainant;

“Director-General” means the Director-General: Justice and Constitutional Development;

“disability” means a physical, mental, intellectual or sensory impairment which prevents a person having such an impairment from operating in an environment developed for persons without such an impairment;

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

- (a) they are or were married to each other, including marriage according to any law, custom or religion;
- (b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
- (d) they are family members related by consanguinity, affinity or adoption;
- (e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
- (f) they share or shared the same residence, premises or property within the preceding year;

“domestic violence” means—

- (a) physical abuse;
- (b) sexual abuse;
- (c) emotional, verbal or psychological abuse;
- (d) economic abuse;

- (e) intimidation;
- (f) harassment;
- (g) spiritual abuse;
- (h) damage to property;
- (hA) elder abuse;
- (hB) coercive behaviour;
- (hC) controlling behaviour;
- (hD) exposing or subjecting children to behaviour listed in (a) to (hC);
- (i) entry into the complainant's or a related person's—
 - (i) permanent or temporary residence without his or her consent, where the parties do not share the same residence; or
 - (ii) workplace or place of study, without his or her consent, where the parties do not share the same workplace or place of study; or
- (j) any other abusive behaviour, where such behaviour harms, or inspires the reasonable belief that harm may be caused to the complainant or a related person;

“economic abuse” includes—

- (a) the deprivation of economic or financial resources to which a complainant or a related person is entitled under law or which the complainant or a related person requires out of necessity, including household necessities for the complainant or a related person, and mortgage bond repayments or payment of rent in respect of the shared residence or accommodation; or
- (b) the disposal of household effects or other property in which the complainant has an interest;

“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);

“elder abuse” means conduct or the lack of appropriate action, occurring within a domestic relationship, which causes harm or distress or is likely to cause harm or distress to an older person as defined in the Older Persons Act, 2006 (Act No. 13 of 2006), and includes social isolation or neglect;

“electronic communications” means electronic communications as defined in section 1 of the Electronic Communications Act, 2005;

“Electronic Communications Act, 2005” means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

“electronic communications identity number” means a technical identification label which represents the origin or destination of electronic communications traffic, as a rule clearly identified by a logical or virtual identity number or address assigned to a customer of an electronic communications service provider (such as a telephone number, cellular phone number, electronic mail address with or without a corresponding internet protocol address, web address with or without a corresponding internet protocol address or other subscriber number);

“electronic communications network” means an “electronic communications network” as defined in section 1 of the Electronic Communications Act, 2005, and includes a computer system;

“electronic communications 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;

“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;

“emergency monetary relief” means compensation for monetary losses suffered by a complainant before or at the time of the issue of a protection order as a result of the domestic violence, including—

- (a) loss of earnings;
- (b) medical, optical, dental and related expenses;
- (c) relocation and accommodation expenses;
- (d) household necessities;
- (e) educational expenses; or
- (f) psychosocial services and counselling;

“emotional, verbal or psychological abuse” means degrading or humiliating conduct towards a complainant or a related person, including—

- (a) insults, ridicule or name calling;
- (b) threats to cause emotional pain;
- (c) the exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant’s or a related person’s privacy, liberty, integrity or security; or
- (d) inducing fear;

“functionary”, for purposes of section 2A, means a medical practitioner, health service provider, social worker, official in the employ of a public health establishment, educator or a care-giver or any other person or entity designated by the Minister by notice in the *Gazette*;

“harassment” means directly or indirectly engaging in conduct that the respondent knows or ought to know—

- (a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably—
 - (i) following, watching, pursuing or accosting the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
 - (ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means whether or not conversation ensues; or
 - (iii) sending, delivering or causing the delivery of letters, packages, facsimiles, electronic mail, texts, photos, videos, recordings or other objects to the complainant or a related person, or leaving them where they may be found by, given to, or brought to the attention of, the complainant or a related person; or
- (b) amounts to sexual harassment of the complainant or a related person;

“harm” means any mental, psychological, physical or economic harm;

“intimidation” means uttering or conveying a threat to, or causing a complainant or a related person to receive a threat, which induces fear of imminent harm;

“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;

“peace officer” means a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“physical abuse” means any act or threatened act of physical violence towards a complainant or a related person or, in the case of a complainant who is a child, includes abuse as defined in section 1 of the Children’s Act, 2005 (Act No. 38 of 2005);

“prescribed” means prescribed in terms of a regulation made under section 19;

“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 any other person in a close relationship with the complainant;

“residence” includes institutions for children, the elderly and the disabled;

“respondent” means any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed 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 or a related person, whether or not such conduct constitutes a sexual offence as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) or, in the case of a complainant who is a child, constitutes sexual abuse as contemplated in the Children’s Act, 2005;

“sexual harassment” means any—

- (a) unwelcome sexual attention from a person in a domestic relationship with the complainant who knows or ought reasonably to know that such attention is unwelcome;
- (b) unwelcome explicit or implicit behaviour, suggestions, gestures, messages or remarks of a sexual nature towards the complainant or a related person that have the effect of offending, intimidating or humiliating the complainant in circumstances, which a reasonable person having regard to the circumstances would have anticipated that the complainant would be offended, intimidated or humiliated;
- (c) implied or expressed promise of reward to the complainant for complying with a sexually oriented request; or
- (d) implied or expressed threat of reprisal or actual reprisal made to the complainant for refusal to comply with a sexually oriented request;

“sheriff” means a sheriff appointed in terms of section 2 (1) of the Sheriffs Act, 1986 (Act No. 90 of 1986), or an acting sheriff appointed in terms of section 5 (1) of the said Act;

“spiritual abuse” means—

- (a) ridiculing or insulting the complainant’s religious or spiritual beliefs;
- (b) preventing the complainant from practising his or her religious or spiritual beliefs; or
- (c) using the complainant’s religious or spiritual beliefs to control, manipulate or shame him or her,

including using religious texts or beliefs as a pretext to justify, minimize or rationalize abusive behaviour;

“this Act” includes the regulations.

“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.

2. Duty to assist and inform complainant of rights.— Any member of the South African Police Service must, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, or when the incident of domestic violence is reported—

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

2A. Obligations of functionaries relating to domestic violence.—(1) A functionary, who in the course of the performance of their duties or the exercise of their functions in relation to any person—

- (a) becomes aware of the fact or on reasonable grounds believes or suspects, that a child, a person with a disability or an older person, is a complainant as contemplated in section 1, must comply with subsection (2); or
- (b) becomes aware of the fact that an adult person, other than an adult person with a disability or an older person as contemplated in paragraph (a), is a complainant as contemplated in section 1, must comply with subsection (3).

(2) Where the complainant is a person contemplated in subsection (1)(a), the functionary—

- (a) must—
 - (i) complete a report in the prescribed form setting out the reasons for such knowledge, belief or suspicion; and
 - (ii) in the prescribed manner submit the report to—
 - (aa) a social worker; and
 - (bb) the South African Police Service; and
- (b) may, after conducting, and evaluation of, a risk assessment as prescribed in terms of section 18B, provide or refer the complainant for further services as prescribed in section 18B.

(3) Where the complainant is an adult person as contemplated in paragraph (b), the functionary—

- (a) must—
 - (i) complete a report in the prescribed form setting out the reasons for such knowledge; and
 - (ii) in the prescribed manner submit the report to—
 - (aa) a social worker; or

- (bb) the South African Police Service;
 - (b) must, if it is reasonably possible to do so—
 - (i) provide the complainant with a prescribed list containing the names and contact particulars of accessible shelters and public health establishments;
 - (ii) hand a notice containing information as prescribed to the complainant in the official language of the complainant's choice; and
 - (iii) 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
 - (c) may, after conducting, and evaluation of, a risk assessment as prescribed in terms of section 18B, provide or refer the complainant for further services as may be prescribed in terms of section 18B.
- (4) A functionary 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.
- (5) A functionary who fails to comply with subsection (1), is guilty of an offence.

2B. Obligation to report domestic violence and to provide information.— (1) In circumstances other than those contemplated in section 2A(1), an adult person who—

- (a) has knowledge or a reasonable belief or suspicion that an act of domestic violence has been committed against a child, a person with a disability or an older person; or
- (b) has knowledge that an act of domestic violence has been committed against an adult in a domestic relationship,

must report such knowledge as soon as possible to a social worker or the South African Police Service.

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

- (a) in the prescribed form and must set out the reasons for such knowledge, belief or suspicion; and
- (b) submitted in the prescribed manner to a social worker or 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.

3. Arrest by peace officer without warrant.— (1) A peace officer may, at the scene of an incident of domestic violence, without a warrant, arrest any person who such peace officer reasonably suspects of having committed—

- (a) an act of domestic violence which constitutes an offence in terms of any law; or
- (b) an offence referred to in section 17(1)(a).

(2) A peace officer must arrest a person who is reasonably suspected of having committed an act of domestic violence where physical violence is involved.

(3) A peace officer contemplated in subsection (1) or (2), who is not a member of the South African Police Service, must—

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

- (b) where a protection order has not been issued against the person who has been arrested for committing an act of domestic violence as contemplated in subsection (1)(a) or (2), or where there is no pending application for a protection order against that person—
 - (i) provide the complainant with a prescribed list containing the names and contact particulars of accessible shelters and public health establishments;
 - (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
- (c) provide such further assistance as prescribed in terms of section 18B.

3A. Entering of private dwelling for purposes of obtaining evidence— (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
- (b) reasonably suspects that a person who may furnish information regarding that alleged offence is in any private dwelling,

that member may, notwithstanding the proviso to section 26 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), without a warrant, enter those premises for the purposes of interrogating that person and obtaining a statement from him or her.

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

- (a) must audibly demand admission to the dwelling and notify of the purpose for which the member seeks to enter that dwelling; and
- (b) may, if an occupier of the dwelling does not provide admission to the dwelling, use such force as may be reasonably necessary to overcome any resistance against entry to the dwelling, including the breaking of any door or window of that dwelling.

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

(1A) The prescribed application may be submitted to the clerk of the court remotely by way of a secure online submission or in person.

(1B) The clerk of the court must upload all electronic and hard copies of the applications onto the integrated electronic repository established in terms of section 6A of this Act.

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

- (a) the relief available in terms of this Act; and
- (b) the right to also lodge a criminal complaint against the respondent, if a criminal offence has been committed by the respondent.

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

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

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

(5) The application referred to in subsection (1) may be brought outside ordinary court hours or on a day which is not an ordinary court day or may be submitted online as prescribed, if the court has a reasonable belief that the complainant is suffering or may suffer if the application is not dealt with immediately.

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

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

5. Consideration of application and issuing of interim protection order.—(1) The court must as soon as is reasonably possible consider an application submitted to it in terms of section 4(7) and may, for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which must form part of the record of the proceedings.

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

- (a) where a Family Advocate is available, in the circumstances as may be prescribed in the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), 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 child affected by the proceedings in question, whereupon the provisions of that Act apply with the changes required by the context; or
- (b) by a designated social worker as contemplated in section 47 of the Children’s Act, 2005, if it appears to that court that a child involved in or affected by proceedings in question is in need of care and protection, whereupon the provisions of that Act apply with the changes required by the context.

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

- (a) the respondent is committing, or has committed an act of domestic violence; and
- (b) harm is being or may be suffered by the complainant or a related person as a result of such domestic violence if a protection order is not issued immediately,

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

(3) (a) Upon the issuing of an interim protection order the clerk of the court must immediately notify the complainant and the court must direct that copies of—

- (i) the application and affidavits referred to in section 4(7);
- (ii) the record of any evidence noted in terms of subsection (1); and
- (iii) the interim protection order issued in terms of subsection (2) be served on the respondent.

(b) The documents referred to in subsection (3) must be served in the prescribed manner by the clerk of the court, sheriff or peace officer identified by the court—

- (i) by hand, at the physical address for service specified in the application; or
- (ii) electronically, at the address or number specified in the application, provided that where the complainant and respondent share the same residence, service must be effected by hand.

(c) An interim protection order must call on the respondent to show cause on the return date specified in the order why the interim protection order, should not be made final.

(d) A copy of the application, together with the interim protection order, must be—

- (i) captured by the clerk of the court in the integrated electronic repository of protection orders;
- (ii) accessible as prescribed within the criminal justice system; and
- (iii) sent to the applicant electronically or by hand once service has been effected on the respondent.

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

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

(6) An interim protection order is of force and effect from the time 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 clerk of the court, sheriff or peace officer identified by the court must immediately cause—

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

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

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

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

5A. Attendance of witnesses.— (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, object or thing, if the evidence of that person or book, document, object or thing 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.

5B. Electronic communications service provider to furnish particulars to court.— (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;
- (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 question; or
- (vi) an assessment whether or not the electronic communications service provider is in a position to—
 - (aa) remove the electronic communication or a link to the electronic communication; or
 - (bb) disable access to such electronic communication or a link to such electronic communication.

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

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

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

- (i) an extension of the period of five ordinary court days referred to in paragraph (a) for a further period of five ordinary court days on the grounds that the information cannot be provided timeously; or
- (ii) the cancellation of the direction on the grounds that—
 - (aa) it does not provide an electronic communications service to the complainant or the respondent;
 - (bb) the requested information is not available in the records of the electronic communications service provider; or
 - (cc) its service is not used to host, or was or is not used to disclose the electronic communication in question.

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

- (a) must consider the application;
- (b) may, in the prescribed manner, request such additional evidence by way of an affidavit from the electronic communications service provider as it deems fit;
- (c) must give a decision in respect thereof; and
- (d) must inform the electronic communications service provider in the prescribed form and in the prescribed manner of the outcome of the application.

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

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

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

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

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

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

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

- (a) information that is to be provided to the court;
- (b) reference number of the direction; and
- (c) name and address of the court.

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

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

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

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

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

(9) The Cabinet member responsible for the administration of justice must, by notice in the *Gazette*, prescribe reasonable tariffs of compensation payable to electronic communications service providers for—

- (a) providing the information referred to in subsection (1)(b);
- (b) providing the information to the respondent as contemplated in subsection (7); and
- (c) removing or disabling access to the electronic communications which were used to commit an act of domestic violence as contemplated in subsection 6(a).

(10) (a) The complainant is liable for the costs related to the furnishing of the information and the removing or disabling access to the electronic communications, referred to in subsection (9).

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

- (i) the means of the complainant; and

- (ii) any other circumstances which, in the opinion of the court, should be taken into consideration,
- to determine the ability of the complainant to pay the costs referred to in subsection (9).
- (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 subsection (9), including an order directing the State, subject to section 15, to pay such costs within available resources, in the prescribed manner.
 - (d) The court may, if it has ordered the State to pay the costs referred to in paragraph (c), direct who must refund the costs so paid by the State in the prescribed manner.
- (11) Any electronic communications service or employee of an electronic communications service provider who—
- (a) fails to furnish the required information within five ordinary court days from the time that the direction is served on such electronic communications service provider to a court in terms of subsection (3)(a) or such extended period allowed by the court in terms of subsection (3)(b);
 - (b) makes a false statement in an affidavit referred to in subsection (1) (b), (3)(b), (6)(b) or (c), in a material respect;
 - (c) fails to comply with an order to remove or disable access to the electronic communications in terms of subsection (5)(c) or any variation thereof in terms of subsection (6)(d);
 - (d) fails to comply with subsection (7),
- is guilty of an offence.
- (12) For purposes of this section—
- (a) **“disclose”**, in respect of an electronic communication, means to—
 - (i) send the data message to a person who is the intended recipient of the electronic communication or any other person;
 - (ii) store the data message on an electronic communications network, where the data message can be viewed, copied or downloaded; or
 - (iii) send or otherwise make available to a person, a link to the data message that has been stored on an electronic communications network, where the data message can be viewed, copied or downloaded; and
 - (b) **“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.

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

- (2) Where existing orders are in place, the court—
- (a) must record those orders on the court file;
 - (b) must, where it issues a protection order, or imposes any condition or makes any order which it is competent to impose or make under section 7, ensure that the protection order does not contradict any such existing orders; and
 - (c) may, where it is satisfied that urgent relief against an act of domestic violence is necessary, 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.

6. Issuing of final protection order.— (1) If the respondent does not appear on a return date contemplated in section 5(3) or (5), and if the court is satisfied that—

- (a) proper service has been effected on the respondent; and
- (b) the application contains *prima facie* evidence that the respondent has committed or is committing an act of domestic violence,

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

(1A) If the complainant appears on the return date contemplated in section 5(4), but the respondent does not appear, the court may issue a final protection order in the prescribed form after hearing the matter and—

- (a) considering any evidence previously received in terms of section 5(1); and
- (b) considering such further affidavits or oral evidence as it may direct, which must form part of the record of the proceedings.

(2) If the respondent appears on the return date contemplated in section 5(3) or (5) in order to oppose the issuing of a final protection order, or in 5(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);
- (b) consider such further affidavits or oral evidence as it may direct, which must form part of the record of the proceedings; and
- (c) if there are disputes of fact in the versions before it, the court may extend the return date for the hearing of oral evidence

(2A) If the respondent appears on the return date contemplated in section 5(3) or (5), but the complainant does not appear, the court must extend the interim protection order and the return date and the clerk of the court must notify the complainant of the extended date: Provided that the court may discharge the interim order if the complainant does not appear on the extended date.

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

- (a) proper service has been effected on the respondent; and
- (b) the application contains *prima facie* evidence that the respondent has committed or is committing an act of domestic violence, the court may—
 - (i) extend the interim protection order and the return date for the hearing of oral evidence;
 - (ii) set a new return date where no interim order is in place, and the clerk of the court must notify the parties of the extended date; or
 - (iii) discharge the matter.

(2C) If neither the complainant nor the respondent appears on a return date contemplated in section 5(4), the court may discharge the matter.

(3) The court may, on its own accord or at the request of the complainant order that in the examination of witnesses, including the complainant or a related person, a respondent who is not represented by a legal representative—

- (a) is not entitled to cross-examine directly a person who is in a domestic relationship with the respondent; and
- (b) must put any question to such a witness by stating the question to the court, and the court is to repeat the question accurately to the respondent.

(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) On issuing a final protection order the court must direct that—

- (a) the original of such order 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), 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 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) A copy of the warrant, together with the final protection order, must be—

- (i) captured by the clerk of the court in an integrated electronic repository of protection orders; and
- (ii) accessible as prescribed within the criminal justice system.

(7) Subject to the provisions of sections 5C(2)(c) and 7(7), a final protection order issued in terms of this section has effect and remains in force until it is set aside, and the execution of such order is not automatically suspended upon the noting of an appeal.

6A. Establishment of an integrated electronic repository for domestic violence protection orders and related matters.— (1) An integrated electronic repository for domestic violence protection orders referred to in sections 5 and 6 must in accordance with this Act, be established and maintained by the Minister.

(2) The Minister must designate a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, to administer the integrated electronic repository.

(3) Access to the integrated electronic repository may, in the prescribed manner, be granted to officials in the criminal justice system for the purposes of complying with any obligation under this Act.

7. Court's powers in respect of protection order.—(1) The court may, by means of a protection order referred to in section 5 or 6, prohibit the respondent from—

- (a) committing or attempting to commit any act of domestic violence;
- (b) enlisting the help of another person to commit any such act;
- (c) entering a residence shared by the complainant and the respondent: Provided that the court may impose this prohibition only if it appears to be in the best interests of the complainant;
- (d) entering a specified part of such a shared residence;
- (e) entering the complainant's residence;
- (f) entering the complainant's or a related person's workplace or place of studies;
- (g) preventing the complainant who ordinarily lives or lived in a shared residence as contemplated in paragraph (c) from entering or remaining in the shared residence or a specified part of the shared residence; or
- (h) committing any other act as specified in the protection order, including the distribution of any specified communication, whether electronically or otherwise, on social media or elsewhere

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

- (a) an order—
 - (i) to seize any weapon in the possession or under the control of the respondent, as contemplated in section 9; and
 - (ii) that a peace officer must accompany the complainant to a specified place to assist with arrangements regarding the collection of personal property; or
- (b) the making of a recommendation that the complainant should approach a relevant police station to investigate the matter with the view to the possible institution of a criminal prosecution against the respondent.

(3) In ordering a prohibition contemplated in subsection (1) (c), the court may impose on the respondent obligations as to the discharge of rent or mortgage payments having regard to the financial needs and resources of the complainant and the respondent.

(4) The court may order the respondent to pay emergency monetary relief having regard to the financial needs and resources of the complainant and the respondent, and such order has the effect of a civil judgment of a magistrate's court.

(4A) The court may conduct an enquiry in respect of the respondent in terms of section 35 of the Prevention and Treatment for Substance Abuse Act, 2008 (Act No. 70 of 2008), and commit the respondent to a treatment centre for substance abuse.

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

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

(c) Where the complainant or related person is a child, the complainant's or related person's physical, home and work addresses must not be disclosed until a children's court inquiry into the matter has been held.

(6) If the court is satisfied that it is in the best interests of any child it may—

(a) refuse the respondent contact with such child; or

(b) order contact with such child on such conditions as it may consider appropriate.

(7) (a) The court may not refuse—

(i) to issue a protection order; or

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

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

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

8. Warrant of arrest upon issuing of protection order.—(1) Whenever a court issues a protection order, including an interim protection order, the court must make an order—

(a) authorising the issue of a warrant for the arrest of the respondent, in the prescribed form; and

(b) suspending the execution of such warrant subject to compliance with any prohibition, condition, obligation or order imposed in terms of section 7.

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

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

(a) executed and cancelled; or

(b) lost or destroyed.

(4) (a) A complainant may hand the warrant of arrest together with an affidavit in the prescribed form, wherein it is stated that the respondent has contravened any 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 harm as a result of the alleged breach of the protection order by the respondent, the member must immediately arrest the respondent for allegedly committing the offence referred to in section 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), the member must immediately hand a written notice, in the prescribed form, to the respondent which—

- (i) specifies the name, the residential and work address and the occupation or status of the respondent;
- (ii) calls upon the respondent to appear before a court, 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 the member handed the original notice to the respondent and that the member explained the import thereof to the respondent.

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

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

- (a) the risk to the safety, health or wellbeing of the complainant or related person;
- (b) the seriousness of the conduct comprising an alleged breach of the protection order;
- (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.

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

9. Seizure of weapons.—(1) The court must order a member of the South African Police Service to seize any 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, any person in the domestic relationship or a related person, whether or not by means of such weapon; or
- (b) possession of such 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 weapon contemplated in paragraph (a) of the definition of "weapon", seized in terms of subsection (1) must be kept by the South African Police Service and the court must direct the clerk of the court to refer a copy of the record of the evidence concerned to the relevant station commander for consideration in terms of section 102 of the Firearms Control Act, 2000.

(3) Any 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) may only be returned to the respondent or, if the respondent is not the owner of the 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 weapon so seized is below the amount determined by the Minister in the *Gazette* from time to time;
- (ii) if the return of the 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 weapon be forfeited to the State

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

(b) The National Commissioner of the South African Police Service 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.

10. Variation or setting aside of protection order.—(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 they oppose 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 may not grant such an application to the complainant unless it is satisfied that the application is made freely and voluntarily.

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

11. Attendance of proceedings and prohibition of publication of certain information.—(1) (a) No person may be present during any proceedings in terms of this Act except—

- (a) officers of the court;
- (b) the parties to the proceedings;
- (c) any person bringing an application on behalf of the complainant in terms of section 4 (3);
- (d) any legal representative representing any party to the proceedings;
- (e) witnesses;
- (f) not more than three persons for the purpose of providing support to the complainant;
- (g) not more than three persons for the purpose of providing support to the respondent; and
- (h) any other person whom the court permits to be present:

Provided that the court may, if it is satisfied that it is in the interests of justice, exclude any person from attending any part of the proceedings

(b) Nothing in this subsection limits any other power of the court to hear proceedings in camera or to exclude any person from attending such proceedings.

(2) (a) No person 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 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.

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

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

has jurisdiction to grant a protection order as contemplated in this Act.

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

(3) A protection order is enforceable throughout the Republic.

13. Service of documents.— (1) (a) Service of any document in terms of this Act must 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.

(b) If a document cannot be served as contemplated in paragraph (a), service must be effected by electronic mail, facsimile, short messaging service or other known social media platform of the person who must be served: Provided that proof of service effected in that manner must be provided to the court.

(c) If service cannot be effected as contemplated in paragraphs (a) and (b), the clerk of the court must obtain directions from the magistrate on the manner of service.

(2) The regulations contemplated in section 19 must make provision for financial assistance by the State to a complainant or a respondent who does not have the means to pay the fees of any service in terms of this Act.

14. Legal representation.—Any party to proceedings in terms of this Act may be represented by a legal representative.

15. Orders as to costs of service and directions.— (1) The court may, 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.

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

- (a) service of any process or documents;
- (b) obtaining the information contemplated in section 5B(1)(b); or
- (c) removal or disabling of Access to Electronic Communications contemplated in section 5B(6).

16. Appeal and review.—The provisions in respect of appeal and review contemplated in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the Superior Courts Act, 2013 (Act No. 10 of 2013), apply to any proceedings in terms of this Act.

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

- (a) contravenes any prohibition, condition, obligation or order imposed in terms of section 7;
- (b) contravenes the provisions of section 11(2)(a);
- (c) fails to comply with any direction in terms of the provisions of section 11(2)(b); or
- (d) in an affidavit referred to in section 8(4)(a), wilfully makes a false statement in a material respect,

is guilty of an offence and liable on conviction—

- (i) in the case of an offence referred to in paragraph (a)—
 - (aa) if a first offender, to a fine or imprisonment for a period not exceeding five years or to both such fine and such imprisonment; or
 - (bb) if a second or subsequent offender, to imprisonment for a period not exceeding 10 years; and
- (ii) in the case of an offence contemplated in paragraph (b), (c), or (d)—
 - (aa) if a first offender, to a fine or imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or
 - (bb) if a second or subsequent offender, to a fine or imprisonment for a period not exceeding four years or to both such fine and such imprisonment.

(2) Any person who is convicted of an offence referred to in section 5A(3), is liable on conviction—

- (a) in the case of a first offender, to a fine or imprisonment for a period not exceeding three months; or
- (b) in the case of a second or subsequent offender, to a fine or imprisonment for a period not exceeding six months.

(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—

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

(4) A functionary who is convicted of an offence referred to in section 2A(5), 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.

(5) 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.

18. Application of Act by prosecuting authority and members of South African Police Service.—(1)

No prosecutor 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 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 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.

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

(4) (a) Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the national instructions referred to in subsection (3), constitutes misconduct as contemplated in the South African Police Service Act, 1995, and the Secretariat, established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, 2011 (Act No. 2 of 2011), must be informed immediately of any such failure reported to the South African Police Service.

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

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

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

(c) The Secretariat must, every six months, submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4) (a), and setting out the recommendations made in respect of such matters.

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

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

18A. Directives for clerks of court.—(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 provide that adequate disciplinary steps will be taken against a clerk of the court who fails to comply with any directive.

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

18B. Directives by Departments of Health, Social Development, Basic Education, Higher Education and Training and Communications and Digital Technologies.—(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 as well as 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 domestic violence cases, in order to achieve the objects of this Act.

(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;

- (b) prescribe the manner in which a functionary must deal with a complainant who is a child, a person with a disability or an older person, in order to protect them against further acts of domestic violence;
- (c) prescribe services to be provided to a complainant who is an adult person;
- (d) 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 Service, 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;
- (e) provide for the designation of accredited shelters;
- (f) prescribe standards and minimum conditions for the provision of services in accredited shelters; and
- (g) 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.

19. Regulations.—(1) The Minister may make regulations regarding—

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

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

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

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

21. Repeal of laws and savings.—

(1) Sections 1, 2, 3, 6 and 7 of the Prevention of Family Violence Act, 1993 (Act No. 133 of 1993), are hereby repealed.

(2) Any application made, proceedings instituted or interdict granted in terms of the Act referred to in subsection (1) shall be deemed to have been made, instituted or granted in terms of this Act.

22. Short title and commencement.—

This Act shall be called the Domestic Violence Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.