



Free from Harassment

On 2 December 2011 the President of South Africa, Mr. JG Zuma (MP), signed the Protection of Harassment Act, 17 of 2011 (the Harassment Act) into law. The Harassment Act will come into operation on **27 April 2013**, our national Freedom Day. Freedom Day marks the liberation of our country and its people from a long period of oppression by minority rule through the relentless efforts of those who fought for our liberation who had to endure imprisonment, harassment and death by the apartheid-era government.

It also signifies the date on which all persons in South Africa irrespective of race and/or creed cast their vote in the first democratic election in the country on 27 April 1994, to afford us the freedoms that we enjoy today. However, today we have violence, perpetrated by the hands of persons known to victims of crime.

The department of Justice and Constitutional Development is responsible for ensuring the implementation of the Harassment Act. This Act will run concurrently with the Domestic Violence Act, 116 of 1998. This means that victims of domestic violence will also be able to rely on the provisions of the Harassment Act to enforce their constitutional rights of equality, privacy, dignity, freedom and security of their person.

These constitutional rights incorporate the right of a person to be free from all forms of violence from either public or private sources and entrenches the rights of children to have their best interests considered as paramount importance.

Harassment is defined in the new Law as **direct or indirect action that a reasonable person knows or ought to know would cause harm or inspires the reasonable belief that harm may be caused to the victim or a related person**. Examples of harassment include ***following, watching, pursuing or accosting of the victim or a related person, as well as sending, delivering or causing electronic communication to be sent to the victim or related person***. Harassment also includes loitering outside of or near the building or place where the victim or related person lives, works, carries on business, studies or happens to be and includes sexual harassment. The definition of harassment in terms of the Act is quite wide and is done so purposefully in order to provide for most if not all possible scenarios in which harassment or stalking could take place.

The Harassment Act allows for the issuing of protection orders to ensure that victims of harassment and/or their family members are provided with an effective remedy to enforce their constitutional rights to live in an environment free from violence.

The rights to equality and dignity are but some of the many fundamental rights protected in our Constitution that today places itself at the forefront of the struggle to eradicate violence against vulnerable groups. More so our Constitution places an even greater obligation on: the laws that Parliament passes, our courts, our state departments and institutions and on Civil Servants to make our constitutional principles and fundamental rights a reality in all our people's lives.

Vulnerable groups is a term used for those persons that require even greater protection by our law due to their age, gender and/or disability. These persons require greater protection because

they are more vulnerable to abuse, exploitation and being taken advantage of than able-bodied persons.

The Harassment Act and Domestic Violence Act both create a protection order that prohibits the perpetrator and anyone acting on their behalf from engaging in acts of physical, sexual, emotional, psychological and economic abuse. The Harassment Act, however, allows for a protection order in instances that include stalking and/or harassment. Both these laws allow for another person to request a protection order on behalf of another adult person or a child.

The main **distinction** between the Domestic Violence Act and the Harassment Act rests on the fact that the latter is applicable to any person perceived to be harassing another whereas the former is only applicable in instances where there is a familial relationship between the victim and the perpetrator. Another distinction is that in terms of the Harassment Act a protection order can be issued in instances where electronic communication (such as messages over Twitter, Facebook, e-mail, sms, etc.) is being utilized as a tool to harass or instill fear in the victim. Violation of any of the terms of the order constitutes a contempt of court and may lead to the perpetrator's arrest.

The Harassment Act also allows the court to impose a R10 000 fine and/or imprisonment on any electronic communication service provider or its employee(s) who makes false statements or fails to provide information requested by the court in relation to the complaint of harassment. In circumstances where the identity of the perpetrator is unknown the court also has the power to instruct the police to investigate the complaint and determine the identity of the perpetrator.

A person would not need to have legal representation in order to obtain a protection order as the Clerk of the Court would assist victims in this regard. The Clerk of the Court will assist the victim to understand the process involved in applying for a protection order and in certain instances assist the victim in completing the relevant application form.

A strong warning must be issued to all applicants wanting to use the Harassment Act that the courts will not take kindly to the abuse of the process to apply for protection orders as it is a criminal offence. Any person found to be abusing these applications can be sentenced to a fine or imprisonment for a maximum period of five years or a cost order being made against them.

The prevention of violence and harassment directed at our vulnerable groups, is a priority of government and an important part of our crime prevention strategy. Government has a coherent and integrated action plan that also incorporates the involvement of communities. Communities are encouraged to report instances of domestic violence and harassment.

The celebration of Freedom Day marks the need for all of society (government and community) to commit (ourselves) to work together in order to defend the freedoms that we had won as a result of a long, difficult and costly struggle.

The Protection of Harassment Act which comes into operation on 27 April 2013, will assist in ensuring that our citizens realize their constitutional right to live in an environment free of all forms of violence so that all people in South Africa can truly say that they **are** and **feel** safe.

*(Adv Mohamed is the Regional Head of the Department of Justice
and Constitutional Development.*

This piece is written in the writer's personal capacity)

REPUBLIC OF SOUTH AFRICA

**PROTECTION FROM
HARASSMENT ACT**

REPUBLIEK VAN SUID-AFRIKA

**WET OP
BESKERMING TEEN
TEISTERING**

No 17, 2011

GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

ACT

To provide for the issuing of protection orders against harassment; to effect consequential amendments to the Firearms Control Act, 2000; and to provide for matters connected therewith.

PREAMBLE

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

AND IN ORDER to—

- (a) afford victims of harassment an effective remedy against such behaviour; and
- (b) introduce measures which seek to enable the relevant organs of state to give full effect to the provisions of this Act,

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

Definitions and application of Act

1. (1) In this Act, unless the context indicates otherwise—
 - “**child**” means a person under the age of 18 years; 5
 - “**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;
 - “**complainant**” means any person who alleges that he or she is being subjected to harassment; 10
 - “**court**” means any magistrate’s court for a district referred to in the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);
 - “**electronic communications identity number**” means a technical identification label which represents the origin or destination of electronic communications traffic, as a rule clearly identified by a logical or virtual identity number or address assigned to a customer of an electronic communications service provider (such as a telephone number, cellular phone number, e-mail address with or without a corresponding IP address, web address with or without a corresponding IP address or other subscriber number); 15

ALGEMENE VERDUIDELIKENDE NOTA:

Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

WET

Om voorsiening te maak vir die uitreiking van beskermingsbevele teen teistering; om gevolglike wysigings aan die Wet op Beheer van Vuurwapens, 2000, aan te bring; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

AANHEF

NADEMAAL die Handves van Regte in die Grondwet van die Republiek van Suid-Afrika, 1996, die regte van alle mense in die Republiek van Suid-Afrika verskans, met inbegrip van die reg op gelykheid, die reg op privaatheid, die reg op menswaardigheid, die reg op vryheid en sekerheid van persoon, wat die reg om vry te wees van alle vorme van geweld van óf publieke óf private bronne insluit, en die regte van kinders om hulle beste belange as van deurslaggewende belang geag te laat word;

EN OM—

- (a) slagoffers van teistering van 'n effektiewe remedie teen sodanige gedrag te voorsien; en
- (b) maatreëls in te stel wat streef om die betrokke staatsorgane in staat te stel om ten volle gevolg te gee aan die bepalings van hierdie Wet,

BEPAAL DIE PARLEMENT van die Republiek van Suid-Afrika derhalwe soos volg:—

Woordomskrywing en toepassing van Wet

1. (1) In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - “**balju**” ’n persoon ingevolge die Wet op Balju’s, 1986 (Wet No. 90 van 1986), as ’n balju aangestel; 5
 - “**elektroniese kommunikasiediensverskaffer**” enige entiteit of persoon wat gelisensieer is of vrygestel is van lisensiering ingevolge Hoofstuk 3 van die Wet op Elektroniese Kommunikasie, 2005 (Wet No. 36 van 2005), om ’n elektroniese kommunikasiediens te lewer; 10
 - “**elektroniese kommunikasie-identiteitsnommer**” ’n tegniese identifikasie-etiket wat die oorsprong of bestemming van elektroniese kommunikasieverkeer weergee, gewoonlik duidelik geïdentifiseer deur ’n logiese of virtuele identiteitsnommer of adres aan ’n kliënt van ’n elektroniese kommunikasiediensverskaffer toegewys (soos ’n telefoonnommer, ’n selfoonnommer, ’n e-posadres met of sonder ’n ooreenstemmende IP-adres, ’n webadres met of sonder ’n ooreenstemmende IP-adres of ander intekenaarnommer); 15
 - “**hierdie Wet**” ook die regulasies;

“electronic communications service provider” means an entity or a person who is licensed or exempted from being licensed in terms of Chapter 3 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), to provide an electronic communications service;

“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 of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
 - (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, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person; or
- (b) amounts to sexual harassment of the complainant or a related person;

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

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

“related person” means any member of the family or household of a complainant, or any other person in a close relationship to the complainant;

“respondent” means—

- (a) any person against whom proceedings are instituted in terms of this Act; and
- (b) for the purposes of sections 4, 5 and 6, any person who is reasonably suspected of engaging in or who has engaged in harassment of the complainant or a related person;

“sexual harassment” means any—

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

“sheriff” means a person appointed as a sheriff in terms of the Sheriffs Act, 1986 (Act No. 90 of 1986);

“this Act” includes the regulations; and

“weapon” means—

- (a) any firearm or any handgun or airgun or ammunition as defined in section 1(1) of the Firearms Control Act, 2000 (Act No. 60 of 2000); and
- (b) any object, other than that which is referred to in paragraph (a), which is likely to cause serious bodily injury if it were used to commit an assault.

(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.

- “**hof**” enige landdroshof vir ’n distrik bedoel in die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944);
- “**kind**” ’n persoon onder die ouderdom van 18 jaar;
- “**klaer**” enigiemand wat beweer dat hy of sy aan teistering onderwerp word;
- “**klerk van die hof**” ’n klerk van die hof ingevolge artikel 13 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), aangestel, met inbegrip van ’n assistent-klerk van die hof aldus aangestel; 5
- “**leed**” geestelike, psigologiese of fisiese leed of ekonomiese skade;
- “**lid van die Suid-Afrikaanse Polisiediens**” enige lid soos omskryf in artikel 1 van die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet No. 68 van 1995); 10
- “**Minister**” die lid van die Kabinet verantwoordelik vir die regspleging;
- “**respondent**”—
- (a) enige persoon teen wie verrigtinge ingevolge hierdie Wet ingestel is; en
- (b) by die toepassing van artikels 4, 5 en 6, enige persoon wat redelikerwys daarvan verdink word dat hy of sy meedoen aan of meegedoen het aan die teistering van die klaer of ’n verwante persoon; 15
- “**seksuele teistering**” enige—
- (a) onwelkome seksuele aandag van ’n persoon wat weet of redelikerwys behoort te weet dat sodanige aandag nie welkom is nie;
- (b) onwelkome eksplisiete of implisiete gedrag, voorstelle, boodskappe of aanmerkings van ’n seksuele aard wat die uitwerking het dat dit die klaer of ’n verwante persoon beledig, intimideer of verneder in omstandighede waar ’n redelike persoon met inagneming van al die omstandighede sou kon voorsien het dat die klaer of verwante persoon beledig, geïntimideer of verneder sou word; 20
- (c) geïmpliseerde of uitdruklike belofte van vergoeding vir voldoening aan ’n seksueel-georiënteerde versoek; en 25
- (d) geïmpliseerde of uitdruklike dreigement van vergelding of daadwerklike vergelding vir weiering om aan ’n seksueel-georiënteerde versoek te voldoen;
- “**teistering**” die regstreekse of onregstreekse meedoen aan gedrag wat die respondent weet of behoort te weet— 30
- (a) leed veroorsaak of ’n redelike oortuiging wek dat leed aan die klaer of ’n verwante persoon veroorsaak kan word deur die onredelike—
- (i) agtervolging, dophou, najaging of lastigvalling van die klaer of ’n verwante persoon, of rondslenter buite of naby die gebou of plek waar die klaer of verwante persoon woon, werk, besigheid bedryf, studeer of hom of haar bevind; 35
- (ii) meedoen aan verbale, elektroniese of enige ander kommunikasie wat op die klaer of ’n verwante persoon gemik is op enige wyse, ongeag of ’n gesprek daaruit voortvloei of nie; of 40
- (iii) stuur, aflewering of reël van aflewering van briewe, telegramme, pakkette, faksimilees, elektroniese pos of ander voorwerpe aan die klaer of verwante persoon of te laat waar dit gevind kan word deur, gegee kan word aan of tot die aandag van die klaer of verwante persoon gebring kan word; of 45
- (b) neerkom op seksuele teistering van die klaer of ’n verwante persoon;
- “**verwante persoon**” enige lid van die familie of huishouding van ’n klaer, of enige ander persoon in ’n nou verwantskap tot die klaer;
- “**voorskryf**” om ingevolge ’n regulasie kragtens artikel 19 uitgevaardig, voor te skryf; 50
- “**vredesbeampte**” ’n vredesbeampte soos omskryf in artikel 1 van die Strafproseswet, 1977 (Wet No. 51 van 1977); en
- “**wapen**”—
- (a) enige vuurwapen of enige handwapen of ’n windgeweer of ammunisie soos omskryf in artikel 1(1) van die Wet op Beheer van Vuurwapens, 2000 (Wet No. 60 van 2000); en 55
- (b) enige voorwerp, behalwe soos in paragraaf (a) bedoel, wat waarskynlik ernstige liggaamlike besering sal veroorsaak indien dit gebruik sou word om ’n aanranding te pleeg.
- (2) Hierdie Wet verhoed nie ’n persoon wat aansoek kan doen om regshulp teen teistering of agtervolging ingevolge die Wet op Gesinsgeweld, 1998 (Wet No. 116 van 1998), daarvan om vir regshulp ingevolge hierdie Wet aansoek te doen nie.

Application for protection order

2. (1) A complainant may in the prescribed manner apply to the court for a protection order against harassment.
- (2) If the complainant or a person referred to in subsection (3) is not represented by a legal representative, the clerk of the court must inform the complainant or person, in the prescribed manner, of— 5
- (a) the relief available in terms of this Act; and
 - (b) the right to also lodge a criminal complaint against the respondent of *crimen injuria*, assault, trespass, extortion or any other offence which has a bearing on the *persona* or property of the complainant or related person. 10
- (3) (a) Notwithstanding the provisions of any other law, the application for a protection order may, subject to paragraph (b), be brought on behalf of the complainant by another person who has a material interest in the well-being of the complainant or related person.
- (b) An application referred to in paragraph (a) must be brought with the written consent of the complainant, except in circumstances where the complainant is a person who, in the opinion of the court, is unable to do so. 15
- (4) Notwithstanding the provisions of any other law, any child, or person on behalf of a child, may apply to the court for a protection order without the assistance of a parent, guardian or any other person. 20
- (5) The application referred to in subsection (1) may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court has a reasonable belief that the complainant or a related person is suffering or may suffer harm if the application is not dealt with immediately.
- (6) Supporting affidavits by persons who have knowledge of the matter concerned may accompany the application. 25
- (7) The application and affidavits must be lodged with the clerk of the court who must immediately submit the application and affidavits to the court.

Consideration of application and issuing of interim protection order

3. (1) The court must as soon as is reasonably possible consider an application submitted to it in terms of section 2(7) and may, for that purpose, consider any additional evidence it deems fit, including oral evidence or evidence by affidavit, which must form part of the record of proceedings. 30
- (2) If the court is satisfied that there is *prima facie* evidence that— 35
- (a) the respondent is engaging or has engaged in harassment;
 - (b) harm is being or may be suffered by the complainant or a related person as a result of that conduct if a protection order is not issued immediately; and
 - (c) the protection to be accorded by the interim protection order is likely not to be achieved if prior notice of the application is given to the respondent,
- the court must, notwithstanding the fact that the respondent has not been given notice of the proceedings referred to in subsection (1), issue an interim protection order against the respondent, in the prescribed manner. 40
- (3) (a) Upon the issuing of an interim protection order the court must direct that the interim protection order be served on the respondent in the prescribed manner by the clerk of the court, sheriff or peace officer identified by the court. 45
- (b) A copy of the application referred to in section 2(1) and the record of any evidence noted in terms of subsection (1) must be served on the respondent together with the interim protection order in the prescribed manner.
- (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. 50
- (4) If the court does not issue an interim protection order in terms of subsection (2), the court must direct that the certified copies of the application concerned and any supporting affidavits be served on the respondent in the prescribed manner by the clerk of the court, a sheriff or a peace officer identified by the court, together with a prescribed 55

Aansoek om beskermingsbevel

2. (1) 'n Klaer kan op die voorgeskrewe wyse by die hof om 'n beskermingsbevel teen teistering aansoek doen.
- (2) Indien die klaer of 'n persoon bedoel in subartikel (3) nie deur 'n regsverteenwoordiger verteenwoordig word nie, moet die klerk van die hof die klaer of persoon op die voorgeskrewe wyse inlig van—
- (a) die regshulp wat ingevolge hierdie Wet beskikbaar is; en
 - (b) die reg om ook 'n kriminele aanklag van *crimen injuria*, aanranding, betreding, afpersing of enige ander misdryf wat verband hou met die *persona* of eiendom van die klaer of verwante persoon, teen die respondent aanhangig te maak.
- (3) (a) Ondanks die bepalinge van enige ander wet, kan die aansoek om 'n beskermingsbevel, behoudens paragraaf (b), ten behoeve van die klaer gebring word deur enige ander persoon wat 'n wesenlike belang in die welstand van die klaer of verwante persoon het.
- (b) 'n Aansoek bedoel in paragraaf (a) moet met die skriftelike toestemming van die klaer gebring word, behalwe in omstandighede waar die klaer iemand is wat, na die mening van die hof, nie in staat is om dit te doen nie.
- (4) Ondanks die bepalinge van enige ander wet, kan 'n kind, of 'n persoon ten behoeve van 'n kind, sonder die bystand van 'n ouer, voog of enige ander persoon by die hof om 'n beskermingsbevel aansoek doen.
- (5) Die aansoek in subartikel (1) bedoel, kan buite gewone hof-ure of op 'n dag wat nie 'n gewone hofdag is nie gedoen word, indien die hof oortuig is dat die klaer of 'n verwante persoon leed aangedoen word of aangedoen kan word indien die aansoek nie onmiddellik hanteer word nie.
- (6) Ondersteunende beëdigde verklarings deur persone wat kennis van die betrokke geval dra, kan die aansoek vergesel.
- (7) Die aansoek en beëdigde verklarings moet by die klerk van die hof ingedien word, wat die aansoek en beëdigde verklarings onverwyld aan die hof moet voorlê.

Oorweging van aansoek en uitreiking van tussentydse beskermingsbevel

3. (1) Die hof moet 'n aansoek wat ingevolge artikel 2(7) aan hom voorgelê is so gou as wat redelikerwys moontlik is, oorweeg en kan, vir daardie doel, enige bykomende getuienis wat hy goeddink, oorweeg, met inbegrip van mondelinge getuienis of getuienis by wyse van beëdigde verklaring, wat deel moet uitmaak van die oorkonde van die verrigtinge.
- (2) Indien die hof tevrede is dat daar *prima facie*-bewys is dat—
- (a) die respondent aan teistering meedoen of meegedoen het;
 - (b) die klaer of verwante persoon leed ly of kan ly as gevolg van daardie gedrag indien 'n beskermingsbevel nie onmiddellik uitgereik word nie; en
 - (c) die beskerming wat verleen moet word deur die tussentydse beskermingsbevel waarskynlik nie verweselik sal word indien voorafgaande kennisgewing van die aansoek aan die respondent gegee word nie,
- moet die hof, ondanks die feit dat die respondent nie kennis van die verrigtinge in subartikel (1) bedoel, gegee is nie, 'n tussentydse beskermingsbevel teen die respondent uitreik op die voorgeskrewe wyse.
- (3) (a) By die uitreiking van 'n tussentydse beskermingsbevel moet die hof gelas dat die tussentydse beskermingsbevel op die voorgeskrewe wyse op die respondent beteken word deur die klerk van die hof, balju of vredesbeampte deur die hof geïdentifiseer.
- (b) 'n Afskrif van die aansoek in artikel 2(1) bedoel en die oorkonde van enige getuienis ingevolge subartikel (1) genotuleer, moet tesame met die tussentydse beskermingsbevel op die respondent beteken word op die voorgeskrewe wyse.
- (c) 'n Tussentydse beskermingsbevel moet die respondent opdrag gee om op die keerdatum in die bevel gespesifiseer, redes aan te voer waarom 'n finale beskermingsbevel nie uitgereik moet word nie.
- (4) Indien die hof nie 'n tussentydse beskermingsbevel ingevolge subartikel (2) uitreik nie, moet die hof gelas dat gewaarmerkte afskrifte van die betrokke aansoek en enige ondersteunende beëdigde verklarings op die voorgeskrewe wyse op die respondent beteken word deur die klerk van die hof, 'n balju of 'n vredesbeampte geïdentifiseer deur die hof, tesame met 'n voorgeskrewe kennisgewing waarin die

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 on the respondent, but a return date referred to in subsection (3)(c) may be anticipated by the respondent on not less than 24 hours' written notice to the complainant and the court. 5

(6) An interim protection order is of force and effect from the time it is issued by the court and the existence thereof has been brought to the attention of the respondent.

(7) Upon service or upon receipt of a return of service of an interim protection order on a respondent, the clerk of the court must immediately cause— 10

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

(b) the original warrant of arrest referred to in section 11(1)(a), to be served on the complainant in the prescribed manner.

Electronic communications service provider to furnish particulars to court

4. (1) If an application for a protection order is made in terms of section 2 and the court is satisfied in terms of section 3(2) that a protection order must be issued as a result of the harassment of the complainant or a related person by means of electronic communications or electronic mail over an electronic communications system of an electronic communications service provider and the identity or address of the respondent is not known, the court may— 15 20

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

(b) issue a direction in the prescribed form directing an electronic communications service provider to furnish the court in the prescribed manner by means of an affidavit in the prescribed form with— 25

(i) the electronic communications identity number from where the harassing electronic communications or electronic mail originated;

(ii) the name, surname, identity number and address of the respondent to whom the electronic communications identity number has been assigned; 30

(iii) any information which indicates that electronic communications or electronic mail were or were not sent from the electronic communications identity number of the respondent to the electronic communications identity number of the complainant; and

(iv) any other information that is available to an electronic communications service provider which may be of assistance to the court to identify the respondent or the electronic communications service provider which provides a service to the respondent. 35

(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. 40

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

(b) An electronic communications service provider on which a direction is served, may in the prescribed manner by means of an affidavit in the prescribed form apply to the court for— 45

(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 50

(ii) the cancellation of the direction on the grounds that—

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

(bb) the requested information is not available in the records of the electronic communications service provider. 55

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

(a) must consider the application;

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

(c) must give a decision in respect thereof; and 60

respondent aangesê word om op die keerdatum in die kennisgewing vermeld, redes aan te voer waarom 'n beskermingsbevel nie uitgereik moet word nie.

(5) Die keerdatums in subartikels (3)(c) en (4) bedoel, mag nie minder wees nie as 10 dae nadat betekening op die respondent plaasgevind het, maar die keerdatum in subartikel (3)(c) bedoel kan deur die respondent by kennisgewing van minstens 24 uur aan die klaer en die hof vervroeg word. 5

(6) 'n Tussentydse beskermingsbevel het regsrag vanaf die oomblik dat dit deur die hof uitgereik is en die bestaan daarvan onder die aandag van die respondent gebring is.

(7) By betekening of by ontvangs van 'n relaas van betekening van 'n tussentydse beskermingsbevel op 'n respondent, moet die klerk van die hof onverwyld— 10

(a) 'n gesertifiseerde afskrif van die tussentydse beskermingsbevel; en

(b) die oorspronklike lasbrief vir inhegtenisname in artikel 11(1)(a) bedoel, op die klaer laat beteken op die voorgeskrewe wyse.

Elektroniese kommunikasiediensverskaffer moet inligting aan hof verskaf

4. (1) Wanneer daar ingevolge artikel 2 om 'n beskermingsbevel aansoek gedoen word en die hof is, ingevolge artikel 3(2), tevrede dat 'n beskermingsbevel uitgereik moet word as gevolg van die teistering van die klaer of 'n verwante persoon deur middel van elektroniese kommunikasies of elektroniese pos oor 'n elektroniese kommunikasiestelsel van 'n elektroniese kommunikasiediensverskaffer en die identiteit of adres van die respondent is nie bekend nie, kan die hof— 15 20

(a) die verrigtinge verdaag tot enige tyd en datum op die bepalings en voorwaardes wat die hof doenlik ag; en

(b) 'n lasgewing in die voorgeskrewe formaat uitreik wat 'n elektroniese kommunikasiediensverskaffer gelas om die hof op die voorgeskrewe wyse deur 'n beëdigde verklaring in die voorgeskrewe vorm te voorsien van— 25

(i) die elektroniese kommunikasie-identiteitsnommer vanwaar die teisterende elektroniese kommunikasies of elektroniese pos afkomstig is;

(ii) die naam, van, identiteitsnommer en adres van die respondent aan wie die elektroniese kommunikasie-identiteitsnommer toegeken is;

(iii) enige inligting wat aandui dat die elektroniese kommunikasies of elektroniese pos vanaf die elektroniese kommunikasie-identiteitsnommer van die respondent na die elektroniese kommunikasie-identiteitsnommer van die klaer gestuur of nie gestuur is nie; en 30

(iv) enige ander inligting wat beskikbaar is aan 'n elektroniese kommunikasiediensverskaffer wat die hof behulpsaam kan wees om die respondent of die elektroniese kommunikasiediensverskaffer wat 'n diens aan die respondent verskaf, te identifiseer. 35

(2) Indien die hof 'n lasgewing ingevolge subartikel (1) uitreik, moet die hof gelas dat die lasgewing op die elektroniese kommunikasiediensverskaffer op die voorgeskrewe wyse beteken word. 40

(3) (a) Die inligting in subartikel (1)(b)(i), (ii) en (iii) bedoel, moet binne vyf gewone hofdae vanaf die tyd waarop die lasgewing op die elektroniese kommunikasiediensverskaffer beteken is aan die hof verskaf word.

(b) 'n Elektroniese kommunikasiediensverskaffer op wie 'n lasgewing beteken is, kan op die voorgeskrewe wyse deur middel van 'n beëdigde verklaring in die voorgeskrewe vorm by die hof aansoek doen om— 45

(i) 'n verlenging van die tydperk van vyf gewone hofdae in paragraaf (a) bedoel vir 'n verdere tydperk van vyf gewone hofdae op grond daarvan dat die inligting nie tydig voorsien kan word nie; of

(ii) die kansellering van die lasgewing op grond daarvan dat— 50

(aa) dit nie 'n elektroniese kommunikasiediens aan die respondent, klaer of verwante persoon verskaf nie; of

(bb) die inligting wat versoek is nie beskikbaar is in die rekords van die elektroniese kommunikasiediensverskaffer nie.

(4) Na ontvangs van 'n aansoek ingevolge subartikel (3)(b)— 55

(a) moet die hof die aansoek oorweeg;

(b) kan die hof, op die voorgeskrewe wyse, addisionele getuienis by wyse van beëdigde verklaring van die elektroniese kommunikasiediensverskaffer versoek soos wat die hof goeddink;

(c) moet die hof daaroor beslis; en 60

- (d) must inform the electronic communications service provider in the prescribed form and in the prescribed manner of the outcome of the application.
- (5) (a) The court may, on receipt of an affidavit from an electronic communications service provider which contains the information referred to in subsection (1)(b)(i) and (ii), consider the issuing of an interim protection order in terms of section 3(2) against the respondent on the date to which the proceedings have been adjourned. 5
- (b) Any information furnished to the court in terms of subsection (1)(b)(iii) forms part of the evidence that a court may consider in terms of section 3(1).
- (6) An electronic communications service provider must, at least 48 hours before providing the information referred to in subsection (1)(b) to the court, by means of an electronic communication, inform the respondent of the— 10
- (a) information that is to be provided to the court;
- (b) reference number of the direction; and
- (c) name and address of the court.
- (7) (a) The Director-General: Justice and Constitutional Development must, in consultation with the Director-General: Communications and the electronic communications service providers, compile and maintain a list of electronic communications service providers that can provide the courts with the information referred to in subsection (1)(b) and must contain the following particulars of each such electronic communications service provider: 15 20
- (i) The name and address (physical and postal address);
- (ii) the e-mail address;
- (iii) a telephone and facsimile number; and
- (iv) the names of persons who are responsible for providing the information referred to in subsection (1)(b). 25
- (b) An electronic communications service provider must, in the prescribed manner and without undue delay, bring any change of any of the particulars referred to in paragraph (a) to the attention of the Director-General: Justice and Constitutional Development.
- (c) The Director-General: Justice and Constitutional Development must, in the prescribed manner and without undue delay, make the list referred to in paragraph (a) and any subsequent amendments thereto available to all courts. 30
- (8) The Minister may, after consultation with the electronic communications service providers, by notice in the *Gazette*, prescribe reasonable tariffs of compensation payable to electronic communications service providers for providing the information referred to in subsection (1)(b). 35

Court may order investigation to ascertain name and address of respondent

5. (1) If an application for a protection order is made in terms of section 2 and the court is satisfied in terms of section 3(2) that a protection order must be issued as a result of the harassment of the complainant or a related person and the identity or address of the respondent is not known, the court may— 40
- (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 the station commander of the relevant police station to investigate the matter with a view to determining the name and address of the respondent or obtaining any other information which may be required in order to identify or trace the respondent. 45
- (2) If the court issues a direction in terms of subsection (1) the court must direct that the direction be served on the station commander of the relevant police station in the prescribed manner by the clerk of the court or sheriff identified by the court. 50
- (3) (a) The information referred to in subsection (1)(b) must be provided to the court by means of an affidavit in the prescribed form within the time period indicated by the court.
- (b) A station commander 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— 55
- (i) an extension of the period referred to in paragraph (a) on the grounds that the information cannot be provided timeously; or

- (d) moet die hof die elektroniese kommunikasiediensverskaffer in die voorgeskrewe vorm en op die voorgeskrewe wyse inlig van die uitslag van die aansoek.
- (5) (a) Die hof kan, by ontvangs van 'n beëdigde verklaring van 'n elektroniese kommunikasiediensverskaffer wat die inligting bedoel in subartikel (1)(b)(i) en (ii) bevat, die uitreiking van 'n beskermingsbevel ingevolge artikel 3(2) teen die respondent oorweeg op die datum waartoe die verrigtinge verdaag is. 5
- (b) Enige inligting wat ingevolge subartikel (1)(b)(iii) aan die hof verskaf is, maak deel uit van die getuienis wat 'n hof ingevolge artikel 3(1) kan oorweeg.
- (6) 'n Elektroniese kommunikasiediensverskaffer moet, ten minste 48 uur voordat die inligting bedoel in subartikel (1)(b) aan die hof verskaf word, deur middel van 'n elektroniese kommunikasie die respondent inlig van die— 10
- (a) inligting wat aan die hof verskaf moet word;
- (b) verwysingsnommer van die lasgewing; en
- (c) die naam en adres van die hof. 15
- (7) (a) Die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling moet, in oorleg met die Direkteur-generaal: Kommunikasie en die elektroniese kommunikasiediensverskaffers, 'n lys saamstel en onderhou van elektroniese kommunikasiediensverskaffers wat die howe van die inligting in subartikel (1)(b) bedoel kan voorsien, en wat die volgende inligting van elke elektroniese kommunikasiediensverskaffer moet 20 bevat:
- (i) Die naam en adres (fisiese en posadres);
- (ii) die e-posadres;
- (iii) 'n telefoon- en faksimileenommer; en
- (iv) die name van persone wat verantwoordelik is vir die verskaffing van die inligting 25 in subartikel (1)(b) bedoel.
- (b) 'n Elektroniese kommunikasiediensverskaffer moet, op die voorgeskrewe wyse en sonder onredelike vertraging, enige verandering van enige besonderhede in paragraaf (a) bedoel onder die aandag van die Direkteur-generaal: Justisie en Staatkundige 30 Ontwikkeling bring.
- (c) Die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling moet, op die voorgeskrewe wyse en sonder onbehoorlike vertraging, die lys bedoel in paragraaf (a) en enige gevolglike wysigings daaraan aan alle howe beskikbaar stel.
- (8) Die Minister kan, na oorleg met die elektroniese kommunikasiediensverskaffers, by kennisgewing in die *Staatskoerant*, redelike tariewe voorskryf vir vergoeding 35 betaalbaar aan elektroniese kommunikasiediensverskaffers vir die verskaffing van die inligting in subartikel (1)(b) bedoel.

Hof mag ondersoek gelas om naam en adres van respondent vas te stel

5. (1) Wanneer daar om 'n beskermingsbevel ingevolge artikel 2 aansoek gedoen word en die hof is, ingevolge artikel 3(2), tevrede dat 'n beskermingsbevel uitgereik 40 moet word as gevolg van die teistering van die klaer of 'n verwante persoon en die identiteit of adres van die respondent is nie bekend nie, kan die hof—
- (a) die verrigtinge verdaag tot enige tyd en datum op die bepalings of voorwaardes wat die hof doenlik ag; en
- (b) 'n lasgewing in die voorgeskrewe vorm uitreik wat die stasiebevelvoerder van 45 die relevante polisiekantoor gelas om die aangeleentheid te ondersoek met die doel om die naam en adres van die respondent vas te stel of om enige ander inligting te bekom wat nodig is om die respondent te identifiseer of op te spoor.
- (2) Indien die hof 'n lasgewing kragtens subartikel (1) uitreik, moet die hof gelas dat 50 die lasgewing op die voorgeskrewe wyse op die stasiebevelvoerder van die relevante polisiekantoor beteken word deur die klerk van die hof of balju deur die hof geïdentifiseer.
- (3) (a) Die inligting in subartikel (1)(b) bedoel, moet aan die hof verskaf word deur middel van 'n beëdigde verklaring in die voorgeskrewe vorm binne die tydperk deur die 55 hof aangedui.
- (b) 'n Stasiebevelvoerder op wie 'n lasgewing beteken is, kan, op die voorgeskrewe wyse deur middel van 'n beëdigde verklaring in die voorgeskrewe vorm, by die hof aansoek doen om—
- (i) 'n verlenging van die tydperk in paragraaf (a) bedoel op die gronde dat die 60 inligting nie tydig voorsien kan word nie; of

- (ii) the cancellation of the direction on the grounds that, after a reasonable investigation of the matter, the South African Police Service is not in a position to determine the name and address of the respondent or obtain any other information which is required in order to identify or trace the respondent. 5
- (4) After receipt of an application in terms of subsection (3)(b), the court—
- (a) must consider the application;
 - (b) may, in the prescribed manner, request such additional evidence by way of affidavit from the station commander as it deems fit;
 - (c) must give a decision in respect thereof; and 10
 - (d) must inform the station commander, in the prescribed form and in the prescribed manner, of the outcome of the application.
- (5) The court may, on receipt of an affidavit in terms of subsection (3)(a) which contains the information provided for in subsection (1)(b), consider the issuing of an interim protection order in terms of section 3(2) against the respondent on the date to 15 which the proceedings have been adjourned.

Powers of members of South African Police Service to ascertain name and address of respondent

6. (1) A member of the South African Police Service—
- (a) may— 20
 - (i) if the complainant states under oath or affirmation that he or she intends applying for a protection order; and
 - (ii) if it appears from the information stated under oath or affirmation that there are reasonable grounds for believing that a respondent whose name and address are unknown to the complainant or a related person is 25 engaging or has engaged in harassment of the complainant; or
 - (b) must, in terms of a direction issued in terms of section 5(1)(b), in the manner set out in the national instructions issued in terms of section 20(2), investigate the matter with a view to determining the name and address of the 30 respondent.
- (2) A member of the South African Police Service may, in the manner set out in the national instructions issued in terms of section 20(2), request the respondent to furnish such member with his or her full name and address and any other information which the member may require in order to identify or trace the respondent.
- (3) Information obtained by a member of the South African Police Service pursuant 35 to an investigation in terms of subsection (1) must—
- (a) be kept by the member in the manner set out in the national instructions issued in terms of section 20(2); and
 - (b) be provided to the court by means of an affidavit in the prescribed form when an application for a protection order is made by the complainant in terms of 40 section 2.

Attendance of witnesses

7. (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 45 or object appears to the court essential to the just decision of the case.
- (2) A person who is subpoenaed as provided for in subsection (1), must attend the proceedings and remain in attendance at the proceedings, and a person who is in attendance at any proceedings under this Act, though not subpoenaed as a witness, and who is warned by the court to remain in attendance at the proceedings, must remain in 50 attendance at the proceedings, unless he or she is excused by the court.
- (3) Any person who is subpoenaed in terms of subsection (1) or warned in terms of subsection (2) to attend proceedings and who fails to—
- (a) attend or to remain in attendance;
 - (b) appear at the place and on the date and at the time to which the proceedings in 55 question may be adjourned;
 - (c) remain in attendance at those proceedings as so adjourned; or

- (ii) die kansellasië van die lasgewing op die gronde dat, na 'n redelike ondersoek van die aangeleentheid, die Suid-Afrikaanse Polisie diens nie die naam of adres van die respondente kan vasstel of enige inligting kan bekom wat vereis word om die respondente te identifiseer of op te spoor nie.
- (4) Na ontvangs van 'n aansoek ingevolge subartikel (3)(b)— 5
- (a) moet die hof die aansoek oorweeg;
- (b) kan die hof, op die voorgeskrewe wyse, sodanige addisionele getuieis by wyse van beëdigde verklaring van die stasiebevelvoerder versoek soos wat die hof goeddink;
- (c) moet die hof daarvoor beslis; en 10
- (d) moet die hof die stasiebevelvoerder in die voorgeskrewe vorm en op die voorgeskrewe wyse inlig van die uitslag van die aansoek.
- (5) Die hof kan, by ontvangs van 'n beëdigde verklaring ingevolge subartikel (3)(a) wat die inligting in subartikel (1)(b) bedoel bevat, die uitreiking van 'n beskermingsbevel ingevolge artikel 3(2) teen die respondente oorweeg op die datum waartoe die verrigtinge verdaag is. 15

Bevoegdheids van lede van Suid-Afrikaanse Polisie diens om naam en adres van respondente vas te stel

6. (1) 'n Lid van die Suid-Afrikaanse Polisie diens—
- (a) kan— 20
- (i) indien die klaer onder eed of bevestiging verklaar dat hy of sy van voorneme is om vir 'n beskermingsbevel aansoek te doen; en
- (ii) indien dit uit die inligting onder eed of bevestiging blyk dat daar redelike gronde is om te glo dat 'n respondente wie se naam en adres onbekend is aan die klaer of verwante persoon, meedoen of meegeedoën het aan teistering van die klaer; of 25
- (b) moet, ingevolge 'n lasgewing uitgereik kragtens artikel 5(1)(b), op die wyse uiteengesit in die nasionale instruksies uitgereik ingevolge artikel 20(2), die aangeleentheid ondersoek met die doel om die naam of adres van die respondente vas te stel. 30
- (2) 'n Lid van die Suid-Afrikaanse Polisie diens kan, op die wyse uiteengesit in die nasionale instruksies uitgereik ingevolge artikel 20(2), die respondente versoek om sodanige lid te voorsien van sy of haar volle naam en adres en enige ander inligting wat die lid mag benodig om die respondente te identifiseer of op te spoor.
- (3) Inligting wat bekom is deur 'n lid van die Suid-Afrikaanse Polisie diens ooreenkomstig 'n ondersoek ingevolge subartikel (1), moet— 35
- (a) deur die lid gehou word op die wyse uiteengesit in die nasionale instruksies uitgereik ingevolge artikel 20(2); en
- (b) aan die hof voorsien word by wyse van 'n beëdigde verklaring in die voorgeskrewe vorm wanneer 'n aansoek om 'n beskermingsbevel ingevolge artikel 2 deur die klaer gedoen word. 40

Bywoning van getuies

7. (1) Die hof kan, op die voorgeskrewe wyse en in enige stadium van verrigtinge kragtens hierdie Wet, enigiemand laat dagvaar as 'n getuie by daardie verrigtinge of om enige boek, dokument of voorwerp voor te lê, indien dit vir die hof blyk dat die getuieis van daardie persoon of boek, dokument of voorwerp noodsaaklik is vir die regverdige beregting van die saak. 45
- (2) 'n Persoon wat gedagvaar is soos bepaal in subartikel (1), moet die verrigtinge bywoon en teenwoordig bly by die verrigtinge, en 'n persoon wat teenwoordig is by enige verrigtinge kragtens hierdie Wet, wat nie gedagvaar is as 'n getuie nie maar wat deur die hof gewaarsku word om teenwoordig te bly by die verrigtinge, moet teenwoordig bly by die verrigtinge, tensy hy of sy deur die hof verskoon word. 50
- (3) Enige persoon wat gedagvaar is ingevolge subartikel (1) of gewaarsku is ingevolge subartikel (2) om verrigtinge by te woon en wat versuim om—
- (a) dit by te woon of om teenwoordig te bly; 55
- (b) te verskyn by die plek en op die datum en die tyd waartoe die betrokke verrigtinge verdaag is;
- (c) teenwoordig te bly by daardie verrigtinge wat aldus verdaag is; of

(d) produce any book, document or object specified in the subpoena, is guilty of an offence referred to in section 18(3).

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

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

- (a) the public or any class thereof may not be present at those proceedings or any part thereof; 5
- (b) the identity or address of any person may not be revealed; or 10
- (c) no information relating to the proceedings be published in any manner whatsoever. 10

(2) Where a witness in proceedings under this Act is a child, the court may direct that no person, other than the witness and his or her parent or guardian or a person *in loco parentis*, may be present at the proceedings, unless that person's presence is necessary in connection with the proceedings or that person is authorised by the court to be present. 15

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

(4) Before the court acts in terms of subsection (1), (2) or (3), it may give any person who has an interest in the matter the opportunity to apply to the court— 20

- (a) to be present at the proceedings; or
- (b) to publish—
 - (i) the identity of any person involved in such proceedings; or
 - (ii) any information relating to such proceedings. 25

Issuing of protection order

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

- (a) proper service has been effected on the respondent; and
- (b) the application contains *prima facie* evidence that the respondent has engaged or is engaging in harassment, 30

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

(2) If the respondent appears on the return date and opposes 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 3(1); and 35
- (b) consider any further affidavits or oral evidence as it may direct, which must form part of the record of proceedings.

(3) The court may, of its own accord or at the request of the complainant or related person, order that in the examination of those witnesses, including the complainant or related person, a respondent who is not represented by a legal representative— 40

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

(4) Subject to subsection (5), the court must, after a hearing as provided for in subsection (2), issue a protection order in the prescribed form if it finds, on a balance of probabilities, that the respondent has engaged or is engaging in harassment. 45

(5) For the purpose of deciding whether the conduct of a respondent is unreasonable as referred to in paragraph (a) of the definition of "harassment", the court must, in addition to any other factor, take into account whether the conduct, in the circumstances in question, was engaged in— 50

- (a) for the purpose of detecting or preventing an offence;
- (b) to reveal a threat to public safety or the environment;

(d) enige boek, dokument of voorwerp in die dagvaardiging vermeld voor te lê, is skuldig aan 'n misdryf in artikel 18(3) bedoel.

Omstandighede waaronder verrigtinge nie in ope hof mag plaasvind nie en publikasie van inligting

8. (1) Die hof kan, uit eie beweging of op versoek van die klaer of verwante persoon, 5
indien die hof van mening is dat dit in belang van die regspleging is dat die betrokke
verrigtinge agter geslote deure plaasvind, gelas dat—

- (a) die publiek of enige gedeelte van die publiek nie teenwoordig mag wees by daardie verrigtinge of enige gedeelte daarvan nie;
- (b) die identiteit of adres van 'n persoon nie openbaar gemaak mag word nie; of 10
- (c) geen inligting aangaande die verrigtinge op enige wyse hoegenaamd gepubliseer mag word nie.

(2) Waar 'n getuie in verrigtinge kragtens hierdie Wet 'n kind is, kan die hof beveel dat geen persoon, behalwe die getuie en sy of haar ouer of voog of 'n persoon *in loco parentis*, by die verrigtinge teenwoordig mag wees nie, tensy sodanige persoon se 15
teenwoordigheid noodsaaklik is in verband met die verrigtinge of daardie persoon deur die hof gemagtig is om teenwoordig te wees.

(3) Niks in hierdie artikel beperk enige ander bevoegdheid van die hof om verrigtinge *in camera* aan te hoor of om enige persoon uit te sluit van bywoning van daardie 20
verrigtinge nie.

(4) Voordat die hof ingevolge subartikel (1), (2) of (3) handel, kan hy enige persoon wat 'n belang het by die aangeleentheid die geleentheid bied om 'n aansoek tot die hof te rig—

- (a) om by die verrigtinge teenwoordig te wees; of
- (b) om— 25
 - (i) die identiteit van enige persoon betrokke by sodanige verrigtinge; of
 - (ii) enige inligting aangaande sodanige verrigtinge, te publiseer.

Uitreiking van beskermingsbevel

9. (1) Indien die respondent nie op 'n keerdatum in artikel 3(3) of (4) bedoel, verskyn 30
nie, en indien die hof tevrede is dat—

- (a) behoorlike betekening op die respondent plaasgevind het; en
- (b) die aansoek *prima facie*-bewys bevat dat die respondent aan teistering meegedoen het of daaraan meedoen,

moet die hof 'n beskermingsbevel uitreik in die voorgeskrewe vorm. 35

(2) Indien die respondent op die keerdatum verskyn en die uitreiking van 'n finale beskermingsbevel teenstaan, moet die hof voortgaan om die aangeleentheid te verhoor en—

- (a) enige getuienis wat voorheen ingevolge artikel 3(1) ontvang is, oorweeg; en
- (b) die verdere beëdigde verklarings of mondelinge getuienis wat hy gelas, 40
oorweeg, wat deel van die oorkonde van die verrigtinge moet uitmaak.

(3) Die hof kan, uit eie beweging of op versoek van die klaer of verwante persoon, gelas dat by die ondervraging van daardie getuies, met inbegrip van die klaer of verwante persoon, 'n respondent wat nie deur 'n regsverteenvoordiger verteenwoordig 45
is nie—

- (a) nie geregtig is om iemand direk te kruisondervra wat hy of sy na bewering geteister het nie; en
- (b) enige vraag aan die persoon moet stel deur die vraag aan die hof te stel, en die hof die vraag akkuraat aan die persoon moet oordra.

(4) Behoudens subartikel (5) moet die hof, na 'n verhoor soos bepaal in subartikel (2), 'n beskermingsbevel in die voorgeskrewe vorm uitreik indien hy, op 'n oorwig van waarskynlikhede, bevind dat die respondent aan teistering meegedoen het of meedoen. 50

(5) Ten einde te bepaal of die gedrag van 'n respondent onredelik is soos in paragraaf (a) van die omskrywing van "teistering" bedoel, moet die hof, bykomend tot enige ander faktor, in ag neem of die gedrag, in die tersaaklike omstandighede, aan meegedoen 55
is—

- (a) om 'n misdaad na te speur of te voorkom;
- (b) om 'n bedreiging vir die openbare veiligheid of omgewing te openbaar;

- (c) to reveal that an undue advantage is being or was given to a person in a competitive bidding process; or
- (d) to comply with a legal duty.
- (6) On issuing a final protection order, the court must direct that—
 - (a) the original of that order must be served on the respondent; and 5
 - (b) a certified copy of that order, and the original warrant of arrest referred to in section 11(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.
- (7) The clerk of the court must immediately, in the prescribed manner, forward 10 certified copies of any protection order and of the warrant of arrest referred to in section 11(1)(a) to the police station of the complainant's choice.
- (8) Subject to section 10(5), a protection order issued in terms of this section remains in force for a period of five years or such further period as the court may determine on good cause shown unless it is set aside, and the execution of that order is not 15 automatically suspended upon the noting of an appeal against the order.

Court's powers in respect of protection order

- 10.** (1) The court may, by means of a protection order, including an interim protection order, prohibit the respondent from—
 - (a) engaging in or attempting to engage in harassment; 20
 - (b) enlisting the help of another person to engage in harassment; or
 - (c) committing any other act as specified in the protection order.
- (2) The court may impose any additional conditions on the respondent which it deems reasonably necessary to protect and provide for the safety or well-being of the complainant or related person. 25
- (3) The court may order—
 - (a) a member of the South African Police Service to—
 - (i) seize any weapon in the possession or under the control of the respondent as provided for in section 12;
 - (ii) accompany the complainant or related person to a specified place to 30 assist with arrangements regarding the collection of personal property identified in the application for a protection order; or
 - (b) the station commander of the relevant police station to investigate the matter with the view to the possible institution of a criminal prosecution against the 35 respondent.
- (4) (a) The physical, home and work address of the complainant or related person must be omitted from the protection order, unless the nature of the terms of the order necessitates the inclusion of the address.
- (b) The court may issue any directions to ensure that the complainant's or related person's physical address is not disclosed in any manner which may endanger the safety 40 or well-being of the complainant or related person.
- (5) (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 45
 - (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 50 relevant law, the court must order that that provision remains in force for the limited period as the court determines, in order to afford the party concerned the opportunity to seek appropriate relief in terms of that law.

Warrant of arrest upon issuing of protection order

- 11.** (1) Whenever a court issues a protection order, including an interim protection order, the court must make an order— 55

- (c) om te openbaar dat 'n onredelike voordeel in 'n kompeterende bodproses aan 'n persoon gegee word of gegee is; of
- (d) om aan 'n regsplig te voldoen.
- (6) By die uitreiking van 'n finale beskermingsbevel moet die hof gelas dat—
- (a) die oorspronklike van daardie bevel op die respondent beteken word; en 5
- (b) 'n gesertifiseerde afskrif van die bevel, en die oorspronklike lasbrief tot inhegtenisname in artikel 11(1)(a) bedoel, op die klaer beteken word, op die voorgeskrewe wyse deur die klerk van die hof, die balju of 'n vredesbeampte geïdentifiseer deur die hof.
- (7) Die klerk van die hof moet onverwyld, op die voorgeskrewe wyse, gesertifiseerde afskrifte van 'n beskermingsbevel en van die lasbrief vir inhegtenisname in artikel 11(1)(a) bedoel, aan die polisiekantoor van die klaer se keuse stuur.
- (8) Behoudens artikel 10(5) bly 'n beskermingsbevel ingevolge hierdie artikel uitgereik, van krag vir 'n tydperk van vyf jaar of sodanige verdere tydperk wat die hof mag beslis by aanvoering van goeie gronde, tensy dit tersyde gestel word, en die uitvoering van so 'n bevel word nie outomaties opgeskort hangende die aantekening van 'n appèl teen die bevel nie. 15

Bevoegdhede van hof ten opsigte van beskermingsbevel

10. (1) Die hof kan, deur middel van 'n beskermingsbevel, met inbegrip van 'n tussentydse beskermingsbevel, 'n respondent verbied om— 20
- (a) aan teistering mee te doen of te probeer meedoen;
- (b) die hulp van iemand anders te verkry om aan teistering mee te doen; of
- (c) enige ander daad in die beskermingsbevel vermeld, te pleeg.
- (2) Die hof kan enige bykomende voorwaardes wat die hof redelikerwys nodig ag aan die respondent oplê ten einde die klaer of verwante persoon te beskerm en vir sy of haar veiligheid of welstand voorsiening te maak. 25
- (3) Die hof kan—
- (a) 'n lid van die Suid-Afrikaanse Polisie diens bevel om—
- (i) beslag te lê op enige wapen in die besit of onder beheer van die respondent, soos in artikel 12 bepaal; 30
- (ii) die klaer of verwante persoon na 'n spesifieke plek te vergesel om hulp te verleen met reëlings betreffende die afhaal van persoonlike eiendom wat in die aansoek om 'n beskermingsbevel geïdentifiseer is; of
- (b) die stasiebevelvoerder van die betrokke polisie kantoor bevel om die aangeleentheid te ondersoek met die oog op die moontlike instelling van strafregtelike vervolging teen die respondent. 35
- (4) (a) Die fisiese, huis- en werksadres van die klaer of verwante persoon moet uit die beskermingsbevel weggelaat word, tensy die aard van die bevel se bepalings die insluiting van die adres noodsaak.
- (b) Die hof kan enige lasgewings uitreik ten einde te verseker dat die klaer of verwante persoon se fisiese adres nie geopenbaar word op 'n wyse wat die veiligheid of welstand van die klaer of verwante persoon in gevaar kan stel nie. 40
- (5) (a) Met dien verstande dat die klaer nie in besit is van of nie besig is om aansoek te doen om 'n beskermingsbevel teen teistering of agtervolging soos in die Wet op Gesinsgeweld, 1998 (Wet No. 116 van 1998), bepaal nie, mag die hof nie weier nie— 45
- (i) om 'n beskermingsbevel uit te reik; of
- (ii) om enige voorwaarde op te lê of enige bevel te maak, wat die hof bevoeg is om op te lê of te maak kragtens hierdie artikel, bloot op grond daarvan dat ander regs middele aan die klaer beskikbaar is.
- (b) Indien die hof van mening is dat enige bepaling van 'n beskermingsbevel 'n aangeleentheid hanteer wat, in die belang van geregtigheid, ingevolge enige ander relevante regs bepaling verder hanteer behoort te word, moet die hof bevel dat so 'n bepaling vir die beperkte tydperk wat die hof bepaal van krag bly, ten einde die betrokke party die geleentheid te bied om gepaste regshulp ingevolge so 'n regs bepaling te bekom. 55

Lasbrief tot inhegtenisname by uitreiking van beskermingsbevel

11. (1) Wanneer 'n hof 'n beskermingsbevel, met inbegrip van 'n tussentydse beskermingsbevel, uitreik, moet die hof 'n bevel maak—

- (a) authorising the issue of a warrant for the arrest of the respondent, in the prescribed form; and
 - (b) suspending the execution of that warrant subject to compliance with any prohibition, condition, obligation or order imposed in terms of section 10.
- (2) The warrant referred to in subsection (1)(a) remains in force unless the protection order expires in terms of section 9(8), is set aside, or is cancelled after execution. 5
- (3) The court may issue the complainant with a second or further warrant of arrest, if the complainant files an affidavit in the prescribed form in which it is stated that the warrant is required for his or her protection and that the existing warrant of arrest has been— 10
- (a) executed and cancelled; or
 - (b) lost or destroyed.
- (4) (a) A complainant may hand the warrant of arrest, together with an affidavit in the prescribed form, wherein it is stated that the respondent has contravened any specified prohibition, condition, obligation or order contained in a protection order, to any member of the South African Police Service. 15
- (b) If it appears to the member of the South African Police Service concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant or related person is suffering harm or may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the member must immediately arrest the respondent for allegedly committing the offence referred to in section 18(1)(a). 20
- (c) If the member of the South African Police Service concerned is of the opinion that there are insufficient grounds for arresting the respondent in terms of paragraph (b), he or she must immediately hand to the respondent a written notice in the prescribed form, which— 25
- (i) specifies the name, the residential and work address and the occupation or status of the respondent;
 - (ii) calls upon the respondent to appear before a court on the date and at the time specified in the notice, on a charge of committing the offence referred to in section 18(1)(a); and 30
 - (iii) contains a certificate signed by the member of the South African Police Service concerned to the effect that he or she handed the original notice to the respondent and that he or she explained its import to the respondent.
- (d) The member of the South African Police Service must immediately forward a duplicate original of a notice referred to in paragraph (c) to the clerk of the court concerned, and the mere production in the court of such a duplicate original is *prima facie* proof that the original was handed to the respondent specified therein. 35
- (5) In considering whether or not the complainant or related person is suffering harm or may suffer imminent harm, as provided for in subsection (4)(b), the member of the South African Police Service must take into account the— 40
- (a) risk to the safety or well-being of the complainant or related person;
 - (b) seriousness of the conduct comprising an alleged breach of the protection order;
 - (c) length of time since the alleged breach occurred; and
 - (d) nature and extent of the harm previously suffered by the complainant or related person. 45
- (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 of the South African Police Service must inform the complainant of his or her right simultaneously to lay a criminal charge against the respondent, if applicable, and explain to the complainant how to lay such a charge. 50

Seizure of weapons

12. The court may order a member of the South African Police Service to seize any weapon in the possession of or under the control of a respondent and direct the clerk of the court to refer a copy of the record of the evidence concerned to the National Commissioner of the South African Police Service for consideration in terms of the Firearms Control Act, 2000 (Act No. 60 of 2000). 55

- (a) waarby die uitreiking van 'n lasbrief, in die voorgeskrewe vorm, vir die inhegtenisname van die respondent gemagtig word; en
- (b) waarby die uitvoering van so 'n lasbrief opgekort word, onderworpe aan die nakoming van enige verbod, voorwaarde, verpligting of bevel ingevolge artikel 10 opgelê. 5
- (2) Die lasbrief bedoel in subartikel (1)(a) bly van krag, tensy die beskermingsbevel ingevolge artikel 9(8) verstryk, tersyde gestel word, of na uitvoering gekanselleer word.
- (3) Die hof kan 'n tweede of verdere lasbrief tot inhegtenisname aan die klaer uitreik, indien die klaer 'n beëdigde verklaring in die voorgeskrewe vorm indien waarin vermeld word dat die klaer so 'n lasbrief vir sy of haar beskerming nodig het en dat die bestaande lasbrief tot inhegtenisname— 10
- (a) uitgevoer en gekanselleer is; of
- (b) verlore of vernietig is.
- (4) (a) 'n Klaer kan die lasbrief tot inhegtenisname, tesame met 'n beëdigde verklaring in die voorgeskrewe vorm, waarin vermeld word dat die respondent 'n bepaalde verbod, voorwaarde, verpligting of bevel in 'n beskermingsbevel vervat, oortree het, aan enige lid van die Suid-Afrikaanse Polisie diens oorhandig. 15
- (b) Indien dit vir die betrokke lid van die Suid-Afrikaanse Polisie diens blyk, behoudens subartikel (5), dat daar redelike gronde is om te vermoed dat die klaer of verwante persoon aan dreigende leed blootstaan of mag blootstaan as gevolg van die beweerde verbreking van die beskermingsbevel deur die respondent, moet die lid onverwyld die respondent arresteer vir die beweerde pleging van die misdryf in artikel 18(1)(a) bedoel. 20
- (c) Indien die betrokke lid van die Suid-Afrikaanse Polisie diens van oordeel is dat daar nie voldoende gronde is om die respondent ingevolge paragraaf (b) te arresteer nie, moet hy of sy onverwyld 'n skriftelike kennisgewing in die voorgeskrewe vorm aan die respondent oorhandig, wat— 25
- (i) die naam, die woon- en werksadres en die beroep of status van die respondent vermeld;
- (ii) die respondent aansê om op 'n datum en tyd in die kennisgewing vermeld voor 'n hof te verskyn, op 'n aanklag dat hy of sy die misdryf in artikel 18(1)(a) bedoel, gepleeg het; en 30
- (iii) 'n deur die betrokke lid van die Suid-Afrikaanse Polisie diens ondertekende sertifikaat bevat dat hy of sy die oorspronklike kennisgewing aan die respondent oorhandig het en dat hy of sy die betekenis daarvan aan die respondent verduidelik het. 35
- (d) Die lid van die Suid-Afrikaanse Polisie diens moet onverwyld 'n duplikaat-oorspronklike van die kennisgewing in paragraaf (c) bedoel, aanstuur na die klerk van die betrokke hof, en die blote voorlegging aan die hof van so 'n duplikaat-oorspronklike is *prima facie*-bewys dat die oorspronklike daarvan aan die respondent daarin vermeld, oorhandig is. 40
- (5) By die oorweging of 'n klaer of verwante persoon aan dreigende leed blootstaan of mag blootstaan, soos in subartikel (4)(b) bepaal, moet die lid van die Suid-Afrikaanse Polisie diens in ag neem—
- (a) die risiko vir die veiligheid of welstand van die klaer of verwante persoon; 45
- (b) die erns van die gedrag wat 'n beweerde verbreking van die beskermingsbevel uitmaak;
- (c) die tydsduur sedert die beweerde verbreking plaasgevind het; en
- (d) die aard en omvang van die leed wat tevore deur die klaer of verwante persoon gely is. 50
- (6) Wanneer 'n lasbrief vir inhegtenisname ingevolge subartikel (4)(a) aan 'n lid van die Suid-Afrikaanse Polisie diens oorhandig word, moet die lid van die Suid-Afrikaanse Polisie diens die klaer inlig van sy of haar reg om terselfdertyd 'n kriminele klag teen die respondent te lê, indien van toepassing, en aan die klaer verduidelik hoe om so 'n klag te lê. 55

Beslaglegging op wapens

12. Die hof kan 'n lid van die Suid-Afrikaanse Polisie diens beveel om beslag te lê op enige wapen wat in die respondent se besit of onder sy of haar beheer is en die klerk van die hof gelas om 'n afskrif van die oorkonde van die betrokke verrigtinge aan die Nasionale Kommissaris van die Suid-Afrikaanse Polisie diens te stuur vir oorweging ingevolge die Wet op Beheer van Vuurwapens, 2000 (Wet No. 60 van 2000). 60

Variation or setting aside of protection order

13. (1) A complainant or a respondent may, upon notice to the other party and the court concerned, apply for the variation or setting aside of a protection order referred to in section 9 in the prescribed manner.

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

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

Jurisdiction

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

(a) the complainant permanently or temporarily resides, carries on business or is employed;

(b) the respondent permanently or temporarily resides, carries on business or is employed; or

(c) the cause of action arose,

has jurisdiction to issue a protection order as provided for in this Act. 20

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

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

Service of documents

15. Service of any document in terms of this Act must be effected immediately in the prescribed manner by the clerk of the court, the sheriff or a peace officer— 25

(a) as directed by the court in terms of section 3(3)(a) or (4), section 4(2), section 5(2) or section 9(6); or

(b) as decided by the clerk of the court in terms of section 3(7).

Costs

16. The court may only make an order as to costs against any party if it is satisfied that the party in question has acted frivolously, vexatiously or unreasonably. 30

Appeal and review

17. The provisions in respect of appeal and review as provided for in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the Supreme Court Act, 1959 (Act No. 59 of 1959), apply to any proceedings in terms of this Act. 35

Offences

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

(a) contravenes any prohibition, condition, obligation or order imposed in terms of section 10(1) or (2); or

(b) in an affidavit referred to in section 11(4)(a), makes a false statement in a material respect, 40

is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

(2) Any person who reveals the identity or address of any person in contravention of section 8(1)(b) or who publishes any information in contravention of section 8(1)(c), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years. 45

(3) Any person who contravenes or fails to comply with section 7(3) is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding three months. 50

Wysiging of tersydestelling van beskermingsbevel

13. (1) 'n Klaer of 'n respondent kan, by kennisgewing aan die ander party en die betrokke hof, op die voorgeskrewe wyse om die wysiging of tersydestelling van 'n beskermingsbevel in artikel 9 bedoel, aansoek doen.

(2) Indien die hof tevrede is dat omstandighede wesenlik verander het sedert die toestaan van die oorspronklike beskermingsbevel en dat goeie gronde aangevoer is vir die wysiging of tersydestelling van die beskermingsbevel, kan die hof 'n bevel uitreik wat daaraan gevolg gee: Met dien verstande dat die hof nie so 'n aansoek aan die klaer mag toestaan nie, tensy die hof oortuig is dat die aansoek ongedwonge en uit vrye wil gedoen is.

(3) Die klerk van die hof moet 'n kennisgewing soos voorgeskryf aan die klaer en die respondent stuur indien die beskermingsbevel gewysig of tersyde gestel word soos in subartikel (1) bepaal.

Regsbevoegdheid

14. (1) Enige hof binne die gebied waarin— 15

(a) die klaer permanent of tydelik woon, besigheid bedryf of in diens is;

(b) die respondent permanent of tydelik woon, besigheid bedryf of in diens is; of

(c) die eisorsaak ontstaan het,

het regsbevoegdheid om 'n beskermingsbevel soos in hierdie Wet bepaal, uit te reik.

(2) Geen spesifieke minimum tydperk word met betrekking tot subartikel (1)(a) of (b) vereis nie.

(3) 'n Beskermingsbevel is in die hele Republiek afdwingbaar.

Betekening van dokumente

15. Die betekening van enige dokument ingevolge hierdie Wet word onverwyld op die voorgeskrewe wyse uitgevoer deur die klerk van die hof, die balju of 'n vredesbeampte—

(a) soos deur die hof ingevolge artikel 3(3)(a) of (4), artikel 4(2), artikel 5(2) of artikel 9(6) gelas; of

(b) soos deur die klerk van die hof ingevolge artikel 3(7) besluit word.

Koste

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16. Die hof kan slegs 'n kostebevel teen 'n party maak indien hy tevrede is dat so 'n party op 'n beuselagtige, kwelsugtige of onredelike wyse opgetree het.

Appèl en hersiening

17. Die bepalings ten opsigte van appèlle en hersienings soos in die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), en die Wet op die Hooggeregshof, 1959 (Wet No. 59 van 1959), bepaal, is op enige verrigtinge ingevolge hierdie Wet van toepassing.

Misdrywe

18. (1) Ondanks die bepalings van enige ander wet, is 'n persoon wat—

(a) enige verbod, voorwaarde, verpligting of bevel ingevolge artikel 10(1) of (2) opgelê, oortree; of

(b) in 'n beëdigde verklaring in artikel 11(4)(a) bedoel, 'n valse verklaring in 'n wesenlike opsig maak,

aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar.

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(2) 'n Persoon wat die identiteit of adres van enige persoon strydig met artikel 8(1)(b) openbaar of wat enige inligting strydig met artikel 8(1)(c) publiseer, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar.

(3) Enige persoon wat artikel 7(3) oortree of versuim om daaraan te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens drie maande.

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- (4) (a) Any electronic communications service provider or employee of an electronic communications service provider who—
- (i) fails to furnish the required information within five ordinary court days from the time that the direction is served on such electronic communications service provider to a court in terms of section 4(3)(a) or such extended period allowed by the court in terms of section 4(3)(b);
 - (ii) makes a false statement in an affidavit referred to in section 4(1)(b), (3)(b) or (4)(b) in a material respect; or
 - (iii) fails to comply with section 4(6),
- is guilty of an offence.
- (b) Any electronic communications service provider or employee of an electronic communications service provider who is convicted of an offence referred to in paragraph (a), is liable, in the case of—
- (i) an electronic communications service provider, to a fine not exceeding R10 000; or
 - (ii) an employee of an electronic communications service provider to a fine or to imprisonment for a period not exceeding six months.
- (5) Any person who in terms of section 6(2) is requested to furnish his or her name and address or any other information to a member of the South African Police Service and who fails to do so or who furnishes a false or incorrect name and address or other information, is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding six months.

Regulations

19. (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 who does not have the means to pay the fees of any service in terms of this Act; or
 - (ii) to a witness who attends any proceedings in terms of this Act;
 - (c) any matter required to be prescribed in terms of this Act; and
 - (d) 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 be liable to a fine or to imprisonment for a period not exceeding one year.

Policy directives

20. (1) (a) The National Director of Public Prosecutions referred to in section 10 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), in consultation with the Minister and after consultation with the Directors of Public Prosecutions referred to in section 13 of that Act, must issue directives regarding the institution of prosecutions in respect of any offence arising out of this Act.
- (b) The Minister must submit any directives issued in terms of paragraph (a) to Parliament before those directives take effect.
- (2) (a) The National Commissioner of the South African Police Service referred to in section 6 of the South African Police Service Act, 1995 (Act No. 68 of 1995), must issue national instructions as provided for in section 25 of that Act, with which its members must comply in the execution of their functions in terms of this Act, and any instructions so issued must be published in the *Gazette*.
- (b) The Cabinet member responsible for policing must submit any national instructions issued in terms of paragraph (a) to Parliament before those instructions take effect.

- (4) (a) 'n Elektroniese kommunikasiediensverskaffer of 'n werknemer van 'n elektroniese kommunikasiediensverskaffer wat—
- (i) versuim om die vereiste inligting binne vyf gewone hofdae vanaf die tyd toe die lasgewing ingevolge artikel 4(3)(a) op sodanige elektroniese kommunikasiediensverskaffer beteken is of sodanige verlengde tydperk wat ingevolge artikel 4(3)(b) deur die hof toegelaat word, aan die hof te voorsien; 5
 - (ii) 'n valse verklaring in 'n wesenlike opsig in 'n beëdigde verklaring in artikel 4(1)(b), (3)(b) of (4)(b) bedoel, maak;
 - (iii) versuim om aan artikel 4(6) te voldoen, 10
- is aan 'n misdryf skuldig.
- (b) 'n Elektroniese kommunikasiediensverskaffer of werknemer van 'n elektroniese kommunikasiediensverskaffer wat aan 'n misdryf in paragraaf (a) bedoel skuldig bevind word, is strafbaar, in die geval van—
- (i) 'n elektroniese kommunikasiediensverskaffer, met 'n boete van hoogstens R10 000; of 15
 - (ii) 'n werknemer van 'n elektroniese kommunikasiediensverskaffer, met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens ses maande.
- (5) Enige persoon wat ingevolge artikel 6(2) versoek word om sy of haar naam en adres of enige ander besonderhede aan 'n lid van die Suid-Afrikaanse Polisie te verskaf en wat nalaat om dit te doen of wat 'n vals of verkeerde naam en adres of ander inligting verskaf, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens ses maande. 20

Regulasies

19. (1) Die Minister kan regulasies uitvaardig betreffende—
- (a) enige vorm wat ingevolge hierdie Wet voorgeskryf moet word; 25
 - (b) finansiële bystand wat deur die Staat verleen moet word—
 - (i) aan 'n klaer wat nie oor die middele beskik om die fooie vir enige betekening ingevolge hierdie Wet te betaal nie; of
 - (ii) aan 'n getuie wat enige verrigtinge ingevolge hierdie Wet bywoon;
 - (c) enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf moet word; en 30
 - (d) enige ander aangeleentheid wat die Minister noodsaaklik of dienstig ag om voor te skryf ten einde die oogmerke van hierdie Wet te verwesenlik.
- (2) 'n Regulasie kragtens subartikel (1) uitgevaardig—
- (a) moet aan die Parlement voorgelê word alvorens dit in die *Staatskoerant* gepubliseer word; 35
 - (b) wat uitgawes vir die Staat kan meebring, moet in oorleg met die lid van die Kabinet verantwoordelik vir finansies uitgevaardig word; en
 - (c) kan bepaal dat iemand wat 'n bepaling daarvan oortree of versuim om daaraan te voldoen, aan 'n misdryf skuldig is en by skuldigbevinding strafbaar is met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens een jaar. 40

Beleidsvoorskrifte

20. (1) (a) Die Nasionale Direkteur van Openbare Vervolgings bedoel in artikel 10 van die Wet op die Nasionale Vervolgingsgesag, 1998 (Wet No. 32 van 1998), moet in oorleg met die Minister en na oorleg met die Direkteure van Openbare Vervolgings bedoel in artikel 13 van daardie Wet, voorskrifte uitreik betreffende die instelling van vervolgings ten opsigte van enige misdryf wat uit hierdie Wet voortspruit. 45
- (b) Die Minister moet enige voorskrifte wat kragtens paragraaf (a) uitgevaardig is aan die Parlement voorlê voordat sodanige voorskrifte in werking tree.
- (2) (a) Die Nasionale Kommissaris van die Suid-Afrikaanse Polisie bedoel in artikel 6 van die Wet op die Suid-Afrikaanse Polisie, 1995 (Wet No. 68 van 1995), moet nasionale instruksies uitreik soos bepaal in artikel 25 van daardie Wet, wat deur sy lede by die uitvoering van hulle werksaamhede ingevolge hierdie Wet nagekom moet word, en enige instruksies aldus uitgereik, moet in die *Staatskoerant* gepubliseer word.
- (b) Die lid van die Kabinet verantwoordelik vir polisiëring moet enige nasionale instruksies wat ingevolge paragraaf (a) uitgevaardig is aan die Parlement voorlê voordat sodanige instruksies in werking tree. 55

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

(b) The Minister must submit any directives issued in terms of paragraph (a) to Parliament before those directives take effect. 5

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

(5) Any directive or instruction issued under this section may be amended or withdrawn in like manner. 10

Amendment of section 102 of Act 60 of 2000, as amended by section 30 of Act 28 of 2006

21. Section 102 of the Firearms Control Act, 2000, is hereby amended by the insertion after paragraph (a) of subsection (1) of the following paragraph:

“(aA) a final protection order has been issued against such person in terms of the Protection from Harassment Act, 2011;” 15

Amendment of Schedule 2 to Act 60 of 2000

22. Schedule 2 to the Firearms Control Act, 2000, is hereby amended by the insertion after paragraph (d) of item 7 of the following paragraph:

“(e) in terms of section 18(1)(a) of the Protection from Harassment Act, 2011.” 20

Short title and commencement

23. This Act is called the Protection from Harassment Act, 2011, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(3) (a) Die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling moet voorskrifte uitreik wat deur klerke van die hof nagekom moet word in die uitvoering van hulle werksaamhede kragtens hierdie Wet, en enige voorskrifte aldus uitgevaardig moet in die *Staatskoerant* gepubliseer word.

(b) Die Minister moet enige voorskrifte wat ingevolge paragraaf (a) uitgevaardig is aan die Parlement voorlê voordat sodanige instruksies in werking tree. 5

(4) Die voorskrifte en instruksies in hierdie artikel bedoel, moet voorsiening maak dat voldoende dissiplinêre stappe gedoen sal word teen 'n aanklaer, klerk van die hof of polisiebeampte wat versuim om aan enige voorskrif of instruksie, na gelang van die geval, te voldoen. 10

(5) Enige voorskrif of instruksie wat kragtens hierdie artikel uitgereik word, kan op soortgelyke wyse gewysig of ingetrek word.

Wysiging van artikel 102 van Wet 60 van 2000, soos gewysig deur artikel 30 van Wet 28 van 2006

21. Artikel 102 van die Wet op Beheer van Vuurwapens, 2000, word hierby gewysig 15 deur die invoeging in subartikel (1) na paragraaf (a) van die volgende paragraaf:

“(aA) ’n finale beskermingsbevel teen sodanige persoon ingevolge die Wet op die Beskerming teen Teistering, 2011, uitgereik is;”.

Wysiging van Bylae 2 tot Wet 60 van 2000

22. Bylae 2 tot die Wet op Beheer van Vuurwapens, 2000, word hierby gewysig deur 20 die invoeging in item 7 na paragraaf (d) van die volgende paragraaf:

“(e) ingevolge artikel 18(1)(a) van die Wet op die Beskerming teen Teistering, 2011.”.

Kort titel en inwerkingtreeding

23. Hierdie Wet heet die Wet op Beskerming teen Teistering, 2011, en tree in werking 25 op ’n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

