

REPUBLIC OF SOUTH AFRICA

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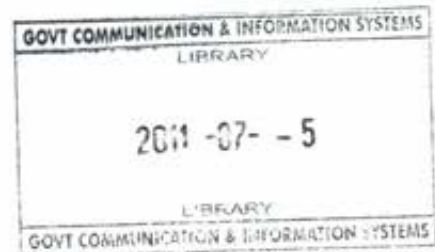
**PORTFOLIO COMMITTEE AMENDMENTS  
TO  
PROTECTION FROM  
HARASSMENT BILL**

[B 1—2010]

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*(As agreed to by the Portfolio Committee on Justice and Constitutional  
Development (National Assembly))*

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[B 1A—2010]

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## AMENDMENTS AGREED TO

### PROTECTION FROM HARASSMENT BILL

[B 1—2010]

#### CLAUSE 1

1. On page 2, from line 5, to omit the definition of “**arm**”.
2. On page 2, from line 15, to omit the definition of “**dangerous weapon**”.
3. On page 2, after line 16, to insert:

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

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

4. On page 2, from line 18, to omit the definition of “**harassment**” and to substitute:

“**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;
- (b) amounts to sexual harassment of the complainant or a related person;

5. On page 4, from line 21, to omit the definition of “**respondent**” and to substitute:

“**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;

6. On page 4, after line 22, to insert:
- “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;
7. On page 4, in line 24, to omit “and”.
8. On page 4, in line 25, after “regulations” to omit “.” and to insert “; and”.
9. On page 4, after line 25, to insert:
- “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.

### CLAUSE 3

1. On page 6, in line 7, after “interim” to insert “protection”.
2. On page 6, in line 17, after “order” to insert “in the prescribed manner”.
3. On page 6, in line 19, after the second “the”, to insert “interim”.
4. On page 6, from line 30, to omit subsection (6) and to substitute:
 

(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.
5. On page 6, in line 35, to omit “8” and to substitute “11”.
6. On page 6, in line 36, after “complainant” to insert “in the prescribed manner”.

### NEW CLAUSES

1. That the following be new Clauses:

**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 communica-

tions or electronic mail over an electronic communications system of an electronic communications service provider and the identity or address of the respondent is not known, the court may—

- (a) adjourn the proceedings to any time and date on the terms and conditions which the court deems appropriate; and
- (b) issue a direction in the prescribed form directing an electronic communications service provider to furnish the court in the prescribed manner by means of an affidavit in the prescribed form with—
  - (i) the electronic communications identity number from where the harassing electronic communications or electronic mail originated;
  - (ii) the name, surname, identity number and address of the respondent to whom the electronic communications identity number has been assigned;
  - (iii) any information which indicates that electronic communications or electronic mail were or were not sent from the electronic communications identity number of the respondent to the electronic communications identity number of the complainant; and
  - (iv) any other information that is available to an electronic communications service provider which may be of assistance to the court to identify the respondent or the electronic communications service provider which provides a service to the respondent.

(2) If the court issues a direction in terms of subsection (1) the court must direct that the direction be served on the electronic communications service provider in the prescribed manner.

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

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

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

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

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

(5) (a) The court may, on receipt of an affidavit from an electronic communications service provider which contains the information referred to in subsection (1)(b)(i) and (ii), consider the issuing of an interim protection order in terms of section 3(2) against the respondent on the date to which the proceedings have been adjourned.

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

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

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

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

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

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

(8) 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).

#### **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—

- (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.

(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.

(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—

- (i) an extension of the period referred to in paragraph (a) on the grounds that the information cannot be provided timeously; or

(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.

(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
- (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 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—
  - (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 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 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 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 section 2.

#### **CLAUSE 4**

1. On page 6, in line 38, to omit “4” and to substitute “7”.
2. On page 6, in line 39, after “proceedings” to insert “or to produce any book, document or object”.
3. On page 6, in line 40, after “person” to insert “or book, document or object”.
4. On page 6, in line 41, to omit “witness” and to substitute “person”.

5. On page 6, in line 46, after "subpoenaed" to insert "in terms of subsection (1) or warned in terms of subsection (2)".
6. On page 6, from line 46, to omit "as provided for in subsection (1)".
7. On page 6, in line 50, to omit "or".
8. On page 6, in line 51, after "adjourned" to omit "," and to add "; or".
9. On page 6, after line 51, to insert:
 

"(d) produce any book, document or object specified in the subpoena,".
10. On page 6, in line 52, to omit "15" and to substitute "18".

#### CLAUSE 5

1. On page 8, in line 3, to omit "5" and to substitute "8".
2. On page 8, after line 17, to insert:
 

(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—

  - (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.

#### CLAUSE 6

1. On page 8, in line 19, to omit "6" and to substitute "9".
2. On page 8, in line 33, to omit "cross-exam directly" and to substitute "directly cross-examine".
3. On page 8, in line 37, to omit "The" and to substitute "Subject to subsection (5), the".
4. On page 8, after line 39, to insert:
 

(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—

  - (a) for the purpose of detecting or preventing an offence;
  - (b) to reveal a threat to public safety or the environment;
  - (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.
5. On page 8, in line 40, to omit "(5)" and to substitute "(6)".
6. On page 8, in line 43, to omit "8" and to substitute "11".
7. On page 8, in line 44, before "by the clerk", to insert "in the prescribed manner".
8. On page 8, in line 45, to omit "(6)" and to substitute "(7)".

9. On page 8, in line 47, to omit "8" and to substitute "11".
10. On page 8, in line 48, to omit "(7)" and to substitute "(8)".
11. On page 8, in line 48, to omit "7" and to substitute "10".
12. On page 8, in line 49, to omit "force until", and to substitute:

force for a period of five years or such further period as the court may determine on good cause shown unless

#### CLAUSE 7

1. Clause rejected.

#### NEW CLAUSE

1. That the following be a new Clause:

##### **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;
- (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.

(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 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 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 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
- (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, 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.

#### CLAUSE 8

1. On page 10, in line 32, to omit "8" and to substitute "11".
2. On page 10, in line 37, to omit "7" and to substitute "10".
3. On page 10, in line 39, after "order", to insert "expires in terms of section 9(8),".
4. On page 10, in line 52, after "suffering", to insert "harm".
5. On page 10, in line 54, to omit "15" and to substitute "18".
6. On page 12, in line 7, to omit "15" and to substitute "18".
7. On page 12, in line 15, after "suffering", to insert "harm".

#### CLAUSE 9

1. On page 12, in line 29, to omit "arms and dangerous".
2. On page 12, in line 30, to omit "9" and to substitute "12".
3. On page 12, from line 30, to omit "arm or dangerous".

#### CLAUSE 10

1. On page 12, in line 36, to omit "10" and to substitute "13".
2. On page 12, in line 38, to omit "6" and to substitute "9".

#### CLAUSE 11

1. On page 12, in line 48, to omit "11" and to substitute "14".
2. On page 14, in line 1, after "(a)" to insert "or (b)".

#### CLAUSE 12

1. On page 14, in line 4, to omit "12" and to substitute "15".
2. On page 14, in line 6, after "(4)" to insert ", section 4(2), section 5(2)".
3. On page 14, in line 6, to omit "6(5)" and to substitute "9(6)".

#### CLAUSE 13

1. On page 14, in line 9, to omit "13" and to substitute "16".

#### CLAUSE 14

1. On page 14, in line 12, to omit "14" and to substitute "17".

**CLAUSE 15**

1. On page 14, in line 16, to omit “15” and to substitute “18”.
2. On page 14, in line 18, to omit “7” and to substitute “10(1) or (2)”.
3. On page 14, in line 19, to omit “8” and to substitute “11”.
4. On page 14, in line 19, to omit “willfully”.
5. On page 14, in line 24, to omit “5” wherever it appears and to substitute “8”.
6. On page 14, in line 27, to omit “4” and to substitute “7”.
7. On page 14, after line 29, to insert:
  - (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.

**CLAUSE 16**

1. On page 14, in line 31, to omit “16” and to substitute “19”.
2. On page 14, after line 32, to insert:
  - (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;
3. On page 14, in line 33, to omit “(b)” and to substitute “(c)”.
4. On page 14, in line 34, to omit “(c)” and to substitute “(d)”.

**CLAUSE 17**

1. On page 14, in line 44, to omit "17" and to substitute "20".
2. On page 16, in line 17, to omit "Director-General: Justice and Constitutional Development" and to substitute "Minister".
3. On page 16, in line 21, after "prosecutor", to insert ", clerk of the court".

**CLAUSE 18**

1. Clause rejected.

**NEW CLAUSES**

1. That the following be new Clauses:

**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;".

**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."

**CLAUSE 19**

1. On page 16, in line 29, to omit "19" and to substitute "23".
2. On page 16, in line 29, to omit "2010" and to substitute "2011".

**SCHEDULE**

1. Schedule rejected.

**LONG TITLE**

1. Long title rejected.

NEW LONG TITLE

1. That the following be a new long title:

**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

2. On page 2, in the eighth line, to omit "harassing behaviour", and to substitute "harassment".