South Africa

Protection from Harassment Act, 2011

Act 17 of 2011

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South Africa

Protection from Harassment Act, 2011

Act 17 of 2011

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Commenced on 27 April 2013 by Protection from Harassment Act, 2011: Commencement

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(English text signed by the President)

ACT

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

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:—

1. Definitions and application of Act

(1) In this Act, unless the context indicates otherwise—

"**child**" means a person under the age of 18 years;

"**clerk of the court**" means a clerk of the court appointed in terms of section 13 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and includes an assistant clerk of the court so appointed;

"**complainant**" means any person who alleges that he or she is being subjected to harassment;

"**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);

"**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 lo 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 sexuallyoriented 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 air gun 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.

2. Application for protection order

(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—

(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.

(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.

(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.

(5) The application referred to in subsection (1) may be brought outside ordinary court hours oron 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.

(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.

3. Consideration of application and issuing of interim protection order

(1) The court most 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.

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

(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.

(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.

(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.

(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 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.

(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—

(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.

4. Electronic communications service provider to furnish particulars to court

(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—

(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).

5. Court may order investigation to ascertain name and address of respondent

(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.

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

(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 lo 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.

7. Attendance of witnesses

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

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

(3) Any person who is subpoenaed in terms of subsection (1) or warned in terms of subsection (2) to attend proceedings and who fails to—

(a) attend or to remain in attendance;

(b) appear at the place and on the date and at the time to which the proceedings in question may be adjourned;

(c) remain in attendance at those proceedings as so adjourned; or

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

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

(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—

(a) the public or any class thereof may not be present at those proceedings or any part thereof;

(b) the identity or address of any person may not be revealed; or

(c) no information relating to the proceedings be published in any manner whatsoever.

(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.

(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—

(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.

9. Issuing of protection order

(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,

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

(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—

(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 section (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.

(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.

(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

(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 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 automatically suspended upon the noting of an appeal against the order.

10. Court's powers in respect of protection order

(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.

11. Warrant of arrest upon issuing of protection order

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

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

(b) suspending the execution of 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.

(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—

(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.

(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).

(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), be or she must immediately hand to the respondent a written notice in the prescribed form, which—

(i) specifies the name, the residential and work address and the occupation or status of the respondent;

(ii) calls upon the respondent to appear before a court 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

(iii) contains a certificate signed by the member of the South African Police Service concerned to the effect that be or she banded 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.

(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—

(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.

(6) Whenever a warrant of arrest is banded to a member of the South African Police Service in terms s 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.

12. Seizure of weapons

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).

13. Variation or setting aside of protection order

(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).

14. Jurisdiction

(1) Any court within the area in which—

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

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

(c) the cause of action arose,

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

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

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

15. Service of documents

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—

(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).

16. Costs

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.

17. Appeal and review

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.

18. Offences

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

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

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

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 toa fine or to imprisonment for a period not exceeding two years.

(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.

(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.

19. Regulations

(1) The Minister may make regulations regarding—

(a) any form required to be prescribed in terms of this Act;

(b) financial assistance to be provided by the State—

(i) to a complainant 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 convict ion be liable to a fine or to imprisonment for a period not exceeding one year.

20. Policy directives

(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.

(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.

(4) The directives and ins1ructions 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.

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

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;".

22. Amendment of Schedule 2 to Act 60 of 2000

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.".

23. Short title and commencement

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*.