

8 July 2022

Department: Justice and Constitutional Development

Attention: Mr M Mokulubete

Per email: MMokulubete@justice.gov.za

Dear Mr Mokulubete

DRAFT REGULATIONS, DIRECTIVES AND TARIFF UNDER THE DOMESTIC VIOLENCE ACT, 1998 (ACT NO. 116 OF 1998) (THE ACT)

1. The Internet Service Providers' Association of South Africa (ISPA) refers to the Draft Regulations, Directives and Tariff under the Domestic Violence Act, 1998 ("**the Draft Regulations and Tariff**") and sets out below its written submissions.

Draft Tariff

2. ISPA has canvassed its members regarding the Draft Tariff and received no objections.
 - 2.1. ISPA notes some of its members have – in support of Government's initiative to combat gender-based violence – elected to not to charge the published tariff for responding to similar court orders under the Protection from Harassment Act 17 of 2011 ("**the Protection from Harassment Act**").
 - 2.2. ISPA will engage with its members regarding extending this approach to responding to court orders under the Domestic Violence Act.

Draft Forms

3. ISPA refers to the proposed Form 23: Court order to electronic communications service provider to remove or disable access to electronic communication.
4. Section 5.3 of this Form requires that an ECSP must immediately on receipt of a court order "ensure that the offensive electronic communication is not later reinstated or enabled so as to be accessible again on the electronic communications service network".
 - 4.1. ISPA is unable to locate a basis for this obligation in section 5B of the Act and requests that the Department consider whether this provision is *ultra vires*.

- 4.2. It will not be practically possible in all circumstances for an ECSP to comply with this obligation where the subject of a protection order is determined to continue to publish the offending electronic communication.
- 4.3. If this provision is retained, ISPA submits that the term “electronic communications service network” is not defined and confuses or conflates the term “electronic communications service” and “electronic communications network”. ISPA suggests the following wording:

“ensure that the offensive electronic communication is not later reinstated or enabled so as to be disclosed in or accessible from the electronic communications service provided by the electronic communications service provider”.

Use of facsimile

5. ISPA understands the constraints applicable in certain Courts but requests that email be specified as the preferred form of communication between Courts and electronic communications service providers (ECSPs).

Electronic communications service provider contact list

6. As a result of its engagements with the DOJCD around the implementation of the Protection from Harassment Act, ISPA maintains a list of electronic communications service providers (ECSPs) as contemplated in section 5B(8)(b) of the Domestic Violence Act. ISPA will make this list available to the Director-General of the Department of Communications and Digital Technologies to facilitate implementation of section 5B of the Domestic Violence Act.
7. The list of ECSPs for the purposes of the Protection from Harassment Act is situated on the DOJCD website at <https://www.justice.gov.za/forms/pha/annex-d-escp-list.pdf>.
 - 7.1. This list is dated 20 May 2019.
 - 7.2. ISPA provided this list and has maintained it since it was provided to the Department.
 - 7.3. ISPA has tried to engage with the Department to provide an updated list but has received no response.
 - 7.4. ISPA has provided a copy of the last-updated list as part of this submission and requests that the Department provide ISPA with a contact person or email address so that further updates can be efficiently uploaded on the Department’s website.
8. ISPA has briefed its members on the obligations of ECSPs under the Domestic Violence Act and will provide resources to assist members to meet these obligations.

Conclusion

9. ISPA trusts that the above is of assistance.

Regards

ISPA

(intended as an electronic signature)