

DOMESTIC VIOLENCE AMENDMENT ACT 14 OF 2021

In operation 14 of April 2023



act:onaid

ACTIVATE!
change drivers



DEFINITIONS AND INTERPRETATIONS



“child” = a person younger than 18 with whom there is a (a) degree of trust (b) level of dependence and commitment (c) length of time relationship existed (d) frequency of contact between parties (e) degree of intimacy between parties



“domestic relationship” = relationship where they:

- (a) are or were married (any law, custom or religion)
- (b) live or lived together even if not married (also same sex)
- (c) are parents of a child or have parental responsibilities
- (d) are family members by consanguinity, affinity or adoption
- (e) are or were engaged, dating or in customary relationship (actual or perceived romantic, intimate or sexual)
- (f) are persons in a close relationship that share / shared the same house



“emergency monetary relief” = means:
• maintenance of any child • person with disability
• older person in care of the complainant



“complainant” = any person who is or has been in a domestic relationship with the respondent and have been (allegedly) subjected to an act of domestic violence. Includes a child in the care of the complainant.

“disclosure by means of electronic communication service” = (a) to send electronic communication to recipient or any other person (b) store electronic communication (c) send a person a link to the electronic communication where it has been stored on a network where it could be downloaded or copied



“domestic violence”
conduct must harm or inspires reasonable belief that harm may be caused to the complainant

“emergency monetary relief”
= means: (a) compensation for losses before or at the time of the issue of the Protection Order includes:

- loss of earnings
- medical, optical, dental and related expenses
- relocation and accommodation expenses
- expenses for household necessities
- education expenses
- transportation costs
- psychosocial services and counselling

DEFINITIONS AND INTERPRETATIONS

Physical abuse is considered:

(a) physical violence or threats of physical violence (b) deprive the complainant of their liberty or threatening to do so (c) give, attempt or threat to give a drug or harmful chemical without consent (d) withholding (or threat) to withhold medication

Emotional, verbal and psychological abuse:

Degrading, manipulating, threatening, offensive, intimidating or humiliating conduct that causes mental or psychological harm: (a) insults, ridicule or name calling; (b) threats to cause emotional pain; (c) the exhibition of obsessive possessiveness or jealousy, which constitutes a serious invasion of the complainant's privacy, liberty, integrity or security; (d) the wilful damaging or destruction of any property in close vicinity of a complainant;

Economic abuse = (a) Deprivation of economic / financial resources to which the complainant is entitled or which the complainant requires out of necessity • education expenses • household necessities • mortgage bond payments (shared residence) • repayment of rent (shared accommodation)

Economic abuse = (b) Disposal of household goods / property without permission (c) Use of financial resources of complainant

without permission (d) Coercing the complainant to: (i) give over control over assets of income, or (ii) sign a legal document that gives someone control over the affairs of the complainant

Intimidation means (a) physical violence, or damage to property belonging to a complainant or any other person (or threats to); (c) to deprive the complainant or any other person of their liberty or threatening to do so; or (d) conveying a threat, or causing a complainant to receive a threat, which induces fear of physical violence, or damage to property belonging to a complainant or any other person through electronic communication, where such conduct is intended to compel a complainant to abstain from doing anything that they have a lawful right to do, or to do anything that they have a lawful right to abstain from doing;

'harassment' means

(a) the unreasonable

- following, watching, stalking, 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, studies or happens to be, which inspires

the belief in the complainant that they or a related person may be harmed or their property may be damaged;

- (b) to repeatedly contact the complainant by means of an electronic communications service, irrespective whether or not a conversation takes place or any information is given to the complainant;
- (c) the repeated sending or delivering of packages, communications given to or brought to the attention of the complainant;
- (d) the unauthorised access to a complainant's communication or electronic communication;
- (e) the monitoring or tracking of the complainant's movements, activities without consent, including, for example, by using technology;
- (f) to enter any part of the joint residence that is exclusively used by the complainant or other property of the complainant, without permission;
- (g) to unreasonably interfere with any property that is exclusively used by or in the possession of the complainant;
- h) to disclose an electronic communication to the

complainant, or cause the complainant to receive a communication, which—

- is abusive, degrading, offensive or humiliating;
- violates or offends the sexual integrity or dignity of a complainant; or
- inspires the belief in the complainant that they or a related person may be harmed or their property may be damaged;

(i) to disclose electronic communication, or to make a communication available, to another person concerning a complainant, which—

- contains information of a private nature;
- violates or offends the sexual integrity or dignity of a complainant;
- is abusive, degrading, offensive or humiliating; or
- inspires the belief in the complainant that they or a related person may be harmed

Sexual harassment means any

- (a) unwelcome sexual attention from someone who knows or should know that such attention is unwelcome;
- (b) unwelcome explicit or implicit behaviour, suggestions, gestures, remarks made, communications sent or delivered, or electronic

communications disclosed, to the complainant—

- of a sexual nature; or
 - regarding the complainant's or related person's sexual orientation, gender that has the effect of offending, intimidating or humiliating the complainant
- (c) implied or expressed promise of reward made to the complainant if they comply with a sexually oriented request; or
- (d) implied or expressed threat of reprisal made to, or actual reprisal against, the complainant for refusal to comply with a sexually oriented request;

'related person' means any member of the family or household of a complainant, or a person in a close relationship with the complainant;

'close relationship' means a relationship between the complainant and any other person, which the court, with regard to the following criteria:

- (a) The degree of trust between the persons;
- (b) the level of each person's dependence on, and commitment to, the other person;
- (c) length of time the relationship has existed;
- (d) frequency of contact between the persons; or
- (e) the degree of intimacy between the persons

'related person abuse' means to—

- (a) threaten the complainant with causing of physical violence to, or the damage of property of, a related person;
- (b) threaten a related person with physical violence or causing damage to the property of, such a person;
- (c) threaten a related person with causing of physical violence to, or the damage of property of, a complainant; or
- (d) commit an act of physical violence against or cause damage to property of a related person where such actions can in the circumstances be regarded to cause harm to the complainant;

'spiritual abuse' means —

- (a) advocating hatred against the complainant because of their religious or spiritual beliefs, that constitutes incitement to cause harm to the complainant;
- (b) preventing the complainant from exercising their constitutional right to freedom of conscience, religion, thought, belief and opinion, including to give external manifestation to their religious or spiritual convictions and beliefs; or
- (c) manipulating the complainant's religious or spiritual convictions and beliefs to justify or rationalise abusing the complainant;

'damage to property' means —

- (a) the wilful damaging or destruction of property ; or
- (b) threats to damage or destroy property , belonging to , or which is in the possession or under the control of , the complainant , or in which the complainant has a vested interest; \

'elder abuse' mean abuse of an older person in a domestic relationship;DOMESTIC V

'coercive behaviour' means to compel or force a complainant to abstain from doing anything that they have a lawful right to do, or to do anything that they have a lawful right to abstain from doing;

'controlling behaviour' means behaviour towards a complainant that has the effect of making the complainant dependent on , or subservient to , the respondent and includes —

- (a) **isolating** them from sources of support;
- (b) **exploiting** their resources or capacities for personal gain;
- (c) **depriving** them of the means needed for independence, resistance or escape; or
- (d) **regulating** their everyday behaviour;

expose a child to domestic violence' means to intentionally cause a child to —

- (a) see or hear domestic violence; or
- (b) experience the effects of domestic violence;

Entry to property : (i) entry in to the complainant's — (i) permanent or temporary home without consent, (if the parties do not live together); or (ii) workplace or place of study, without their consent, where the parties do not share the same workplace or place of study; . . any other **behaviour** of an intimidating , threatening , abusive , degrading , offensive or humiliating nature towards a complainant , where such conduct harms, or inspires the reasonable belief that harm may be caused to the complainant porting / Duty to report?

Mandatory Reporting / Duty to Report

The Act makes it compulsory for specific people to report domestic violence.

- **Adult person** or
- **Functionary:** medical practitioner, healthcare personnel, a social worker, an official in the employ of a public health establishment, an educator, or a caregiver. Any person the Minister may designate.



Who believes or suspects on reasonable grounds that an act of domestic violence has been committed against:

- a child, a person with a disability or an older person, **MUST** report such knowledge, belief or suspicion as soon as possible to a **Social Worker** or **South African Police Service (SAPS)**.

Applying for a Domestic Violence Protection Order

Applicant; The person who approaches the court to apply for a protection order

Complainant; The person experiencing domestic violence named in the application for a protection order; OR The person opening a criminal case with the police

Respondent; The person inflicting domestic violence on the abused person –they may also be referred to as the accused in criminal proceedings.

Clerk of the Court; The justice official responsible for the administration of the protection order applications – includes services

Peace Officer; Includes any magistrate, justice, police official, correctional official.

Who can apply for a protection order?

Any person who has been in a domestic relationship with someone who has subjected them to an act of domestic violence

- Another person can apply on behalf of the abused person if:
- They are a functionary (e.g. social worker, healthcare professional, educator, etc.)

- A concerned person interested in the abused person's well-being (e.g. family member)
- A child of any age can apply for a protection order without consent or assistance of a parent, guardian or another person.an apply for a Domestic Violence Protection Order?

Where can I apply for a protection order?

You can apply at your Magistrates' Court in the area where:

- The abused person permanently or temporarily reside, study, carry on business or are employed.
- The abuser permanently or temporarily resides, studies, carries on business or is employed.
- The act of domestic violence occurred.
- The DVAA now allows a person to apply for a protection order electronically

Process for Applying for a protection order

STEP 1 Go to the Magistrate's Court, ask to be shown where the Domestic Violence Court is in the Court.

STEP 2 At the Domestic Violence Court, the Clerk of the Domestic Violence Court shall help you complete the Application on the Court Forms. On the forms, the person making the application is called the Applicant.

STEP 3 The application has an affidavit which is a sworn statement, where the person making the complaint swears that they are telling the truth. This affidavit must be commissioned. This is when it is stamped as having been made in the presence of a recognised official of the court.

STEP 4 The Application is given by the clerk of the Domestic Violence court to the Magistrate who reads the complaint and the affidavit and decides to issue the Interim Protection Order or Notice. The Magistrate shall put a return date on the notice. This is the date both parties shall have to come to court for the hearing of the case.

STEP 5 The interim Protection order which has the application and affidavit is the served (given) to the Respondent (This is the name given to the person against whom the case is made) who is then notified of the Return date and when they should come to court to have the case heard in court.

STEP 6 On the Return Date the applicant and respondent have the chance to make their case heard in front of the Magistrate at Court.

STEP 7 If the Applicant is successful and able to prove their case the Magistrate issued the Final Protection Order. If the Respondent does not come to court on the Return date even having been made aware of the Return Date the Magistrate may still issue the Final Protection Order.

■ **NB:** If the complainant does not appear on the Return Date, the Magistrate must extend the return date and the clerk of the court must inform both Complainant and Respondent of the new date.

■ If the complainant does not appear on the second return date, the Magistrate may discharge/ cancel the application if there is no valid reason provided.

Enforcing A Protection Order

Warrant of Arrest

When does the complainant receive a warrant of arrest?

- Issued with final protection.
- Interim protection order – after respondent has been served.

When will SAPS use Warrant of arrest?

Police will use the warrant to arrest the respondent based on the following criteria:

- The breach is serious – there are risks to the complainant's safety, health, or wellbeing or that of a related person.
- The length of time between when breach occurred and reporting.
- The nature and extent of harm previously experienced.

■ **NB:** Warrant of arrest can only be used once – if used, complainant must apply for a new warrant from the court.

What happens if the police do not arrest the respondent the scene?

If the police officer thinks there are insufficient grounds for arresting the respondent, the police officer will not arrest the respondent at the scene.

The police officer must immediately give a handwritten notice to the respondent informing them that they must appear in court on a specified date for disobeying the protection order.

New provisions in the DVAA

- The Act has established an electronic repository for all Protection orders. This means there shall be record of protection orders and evidence to track protection orders that have been granted. All applications and supporting evidence and documentation must be captured in the electronic system.
- The Court may now order the communications provider to provide details of a person who has sent electronic communications, where the communications were sent from and information which shows communication was sent by the respondent.

Contact Us

Cape Town

T: +27 (0) 21 423 7088

Johannesburg

T: +27 (0) 11 339 3589

info@genderjustice.org.za • www.genderjustice.org.za

 SonkeTogether  Sonke Gender JusticeNGO  SonkeTogether



act:onaid

ACTIVATE!
change drivers

