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Community Advice Offices South Africa

An Overview of the Domestic Violence Act

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Index

1. Glossary	03
2. Introduction	04
3. What is the purpose of the DVA?	05
4. What is a domestic relationship?	05
5. What is domestic violence?	06
6. What if the respondent uses someone else to commit acts of domestic violence?	10
7. What is a protection order?	10
8. Who can apply for a protection order?	10
9. How do you apply for a protection order?	11
10. What else can you apply for?	14
11. What if the parties do not attend court on the return date?	15
12. How do you enforce a protection order?	15
13. How long does a protection order remain valid?	16

NOTICE

This pamphlet was authored by Dakalo Singo (with input by Naledi Motsiri) of Werksmans Attorneys on behalf of [Community Advice Offices South Africa \(CAOSA\)](#).

This pamphlet is for informational purposes only and its content should not be construed as formal legal advice from Werksmans Attorneys and/or CAOSA. For the practical application of the Domestic Violence Act 116 of 1998 and the processes referred to therein, readers are advised to seek legal advice or assistance from qualified legal practitioners or advisors.



Glossary*



Abbreviations

DVA:	Domestic Violence Act 116 of 1998.
DVAA:	Domestic Violence Amendment Act 14 of 2021.



Definitions

Complainant:	the person (who is or was in a domestic relationship with the respondent) who is applying for a protection order due to being subjected or allegedly subjected to domestic violence.
Communication:	(as referred to in the definition of “harassment”) means anything that is used to impart information or ideas, and includes a letter, text, photo, video recording and audio recordings, but excludes an electronic communication.
Electronic Communication:	electronic representations of information in any form, and includes without limitation voice, sound, data, text, video, animation, visual images, moving images and pictures that are real, simulated or manipulated, or a combination or part thereof, that are disclosed by means of an electronic communications service.
Functionary:	medical practitioners, health care personnel, social workers, educators, care-givers, or any official employed by a public health establishment.
Related Person:	any member of the family or household of a complainant, or a person in a close relationship with the complainant.
Respondent:	the person (who is or was in a domestic relationship with the complainant) against whom a protection order is sought by a complainant, and who has committed or allegedly committed domestic violence against a complainant (whether personally or through a third party actor) against a complainant.
Serve:	the act of delivering a copy of a court document to another person.

* Any words/terms that appear in green throughout this pamphlet are defined in this glossary.

➤ Introduction

Recognising that domestic violence in South Africa is a serious social evil, and that victims of domestic violence are amongst the most vulnerable in society, the DVA was introduced to provide victims of domestic violence with the maximum protection against domestic abuse that is available in law.

Despite the implementation of the DVA, South Africa still has unacceptably high rates of domestic violence, femicide and gender-based violence. At the Presidential Summit against Gender-Based Violence and Femicide in 2018, femicide and gender-based violence were declared a “national crisis”. One of the undertakings made at the summit

was that government should amend the DVA to improve the protections available to victims of domestic violence.

On 14 April 2023, the DVA was amended by the DVAA, in two main ways. First, it expanded the definition of domestic violence by introducing new definitions and revising some pre-existing ones. Secondly, it addressed various technical and procedural issues to provide better protections for victims of domestic violence.

This pamphlet provides a general overview of your rights in terms of the DVA, following the enactment of new provisions, processes and obligations introduced by the DVAA.



› What is the purpose of the DVA?

The main purpose of the DVA is to protect people in domestic relationships who have experienced domestic violence from being subjected to further domestic abuse.

The DVA does this by outlining court procedures for the issuing of protection orders which prohibit a respondent from committing specifically listed acts of domestic violence against a complainant.



› What is a domestic relationship?

The protections available in the DVA only apply to people in domestic relationships. In terms of the DVA, a **complainant** and **respondent** are in a domestic relationship if:

- They are or were married to each other, including where they live or lived together in a relationship like marriage (even if they were not actually married, or they are unable to be married to each other).
- They are or were engaged, dating, or involved in a romantic, intimate, or sexual relationship (even if one of them only believed they were in such a relationship).
- They are the parents of, or they share parental responsibility for, any child or children.

- They are family members related by blood, adoption or marriage (e.g. step-parents, step-children or relatives who are in-laws).
- They are in a close relationship and share or have previously shared the same residence. (NB: *Previously, if the parties no longer shared the same residence, they must have “recently” shared a residence. The word “recently” was deleted by the DVAA*).

If the relationship does not fall into any of the above categories, it is not a domestic relationship as defined in the DVA.

In that case, you may either apply for a protection order in terms of the **Protection from Harassment Act 17 of 2011** (if you have experienced “harassment”, “harm” or “sexual harassment” as defined in that Act), or you may rely on any other applicable law/s for the appropriate relief.

› What is domestic violence?

One of the main changes by the DVAA relates to the definition of “domestic violence”. Several new definitions have been introduced into the DVA, while some pre-existing definitions have been revised. Following the amendments, “domestic violence” in the DVA now means any one, or a combination of the acts or omissions listed below.

Physical Abuse includes any act or threat of:

- physical violence toward a complainant;
- depriving a complainant of their freedom;
- administering or attempting to administer drugs, medicines or any other harmful chemical substances to a complainant without their consent; or
- withholding a complainant’s medication.

Damage to Property means the act or threat of intentionally damaging or destroying property which belongs to, or is in the complainant’s possession or control, or which the complainant has a vested interest in.

Harassment includes:

- causing a complainant to fear being harmed or having their property damaged due to a respondent stalking a complainant or **related person**, or loitering near or outside a building where a complainant or related person lives, works, studies or happens to be (NB: *The word “stalking” was deleted by the DVAA. Although the word does not appear in the DVA anymore, the act of stalking now technically forms part of the revised definition of “harassment”*);
- repeatedly contacting a complainant using an **electronic communication** service (even if no conversation follows, or no information is received by the complainant);

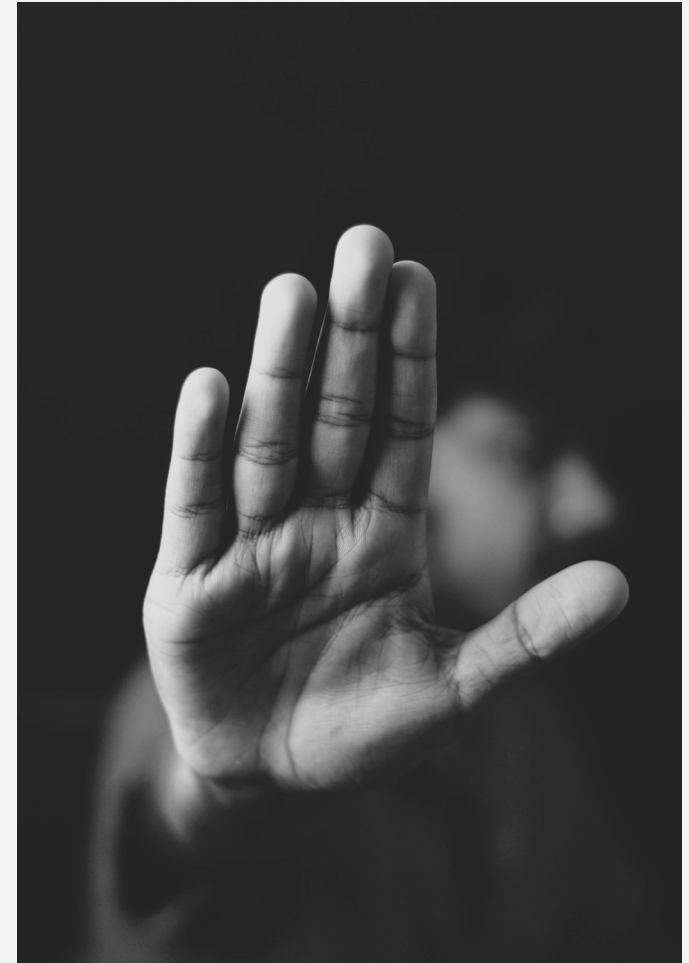
- repeatedly sending or delivering packages, communications or other objects to a complainant, or leaving them where they may be found by, given to or brought to the attention of the complainant;
- accessing a complainant’s **communications** or electronic communications without permission;
- monitoring or tracking a complainant’s movements, activities or interpersonal associations without the complainant’s consent (e.g. using technology);
- entering any part of a complainant’s property or any part of a joint residence that is exclusively used by the complainant, without the complainant’s permission;
- unreasonably interfering with any property that is exclusively used by or is in the possession of a complainant;

- sending or showing a complainant an electronic or other communication which: is abusive, degrading, offensive or humiliating; violates or offends a complainant's sexual integrity or dignity; or causes the complainant to believe that they or a related person may be harmed or may have their property damaged; or
- sending or showing another person an electronic or other communication about a complainant which: contains private information; is abusive, degrading, offensive or humiliating; violates or offends a complainant's sexual integrity or dignity; or causes the complainant to believe that they or a related person may be harmed or may have their property damaged.

Sexual Abuse means any act that abuses, humiliates, degrades or violates a complainant's sexual integrity.

Sexual Harassment means:

- unwelcome sexual attention from a respondent who knows or should reasonably know that such attention is unwelcome;
- unwelcome behaviour, suggestions, gestures, comments or communications by a respondent towards a complainant that are of a sexual nature or relate to the sexual orientation, gender or gender expression of a complainant (or related person) and which offend, intimidate or humiliate the complainant;
- promising a reward to a complainant in exchange for a sexually oriented request; or
- acting or threatening to act against a complainant who rejects a sexually oriented request.



Emotional, Verbal or Psychological Abuse

means degrading, manipulating, threatening, offensive, intimidating, or humiliating behaviour towards a complainant that causes them mental or psychological harm. This includes:

- insulting, ridiculing or name-calling;
- threats to cause emotional pain;
- obsessively possessive or jealous behaviour which seriously invades a complainant's privacy, freedom, integrity or security;
- intentionally damaging any property that is near the complainant;
- harming or threatening to harm a pet or other animal whose welfare affects a complainant's well-being;
- revealing or threatening to reveal a complainant's private information (e.g. sexual orientation) to others, without the complainant's consent;

- threatening to kill or physically harm another person, or to damage their property; or
- a respondent threatening to commit self-harm or suicide.

Intimidation means behaviour by a respondent which is intended to force a complainant to do or not do something, which they have a lawful right to do or not do, by -

- using acts or threats of physical violence to the complainant or any other person;
- damaging property or threatening to damage property belonging to a complainant or any other person;
- depriving a complainant or any other person of their freedom; or
- using an electronic communication to send a threat to a complainant, which causes fear

of physical violence or damage to property belonging to a complainant or any other person.

Coercive Behaviour means behaviour that forces a complainant to do or not do anything that they have a lawful right to do, or not to do.

Controlling Behaviour means behaviour towards a complainant that makes them dependent on, or submissive to, the respondent and includes:

- isolating them from sources of support;
- exploiting their resources or capacities for personal gain;
- depriving them of freedom, or the ability to resist or escape; or
- regulating their everyday behaviour.

Economic Abuse includes:

- depriving a complainant of financial resources which they are either entitled to, or which they necessarily need (e.g. rental or mortgage payments, household expenses, and school fees);
- disposing of property or household items that a complainant has an interest in;
- using a complainant's financial resources without permission; or
- manipulating a complainant into either giving up control of their money or property, or into signing a legal document that gives control of their finances to someone else.

Spiritual Abuse means:

- advocating hatred against a complainant because of their religious or spiritual beliefs, that constitutes incitement to cause harm to the complainant;
- preventing a complainant from exercising their constitutional right to freedom of

conscience, religion, thought, belief and opinion, including externally expressing their religious or spiritual beliefs; or

- manipulating a complainant's religious or spiritual beliefs to justify abusing the complainant.

Related Person Abuse means causing a complainant harm by:

- committing physical violence against or damaging the property of a related person;
- threatening a related person with physical violence against or damage to the property of either the complainant or the related person concerned; or
- threatening a complainant with physical violence against or damage to the property of a related person.

Elder Abuse means any conduct or lack of appropriate action, occurring within a domestic relationship with an older person (i.e. females who are 60 years or older and males who are 65

years or older), where there is an expectation of trust, and which causes or may cause harm or distress to that older person.

Exposing a Child to Domestic Violence means intentionally causing a child to witness acts of domestic violence, or to experience their effects.

Other Forms of Domestic Violence include:

- entry into a complainant's residence (whether temporary or permanent), workplace or place of study, without the complainant's consent, where the parties do not share the same residence, workplace or place of study; or
- any other intimidating, threatening, abusive, degrading, offensive or humiliating behaviour towards a complainant, where such behaviour either harms or causes the complainant to have a reasonable belief that they may be harmed.

› What if the respondent uses someone else to commit acts of domestic violence?

The DVAA has introduced additional protections in the DVA for circumstances where acts of domestic violence are committed by a third party.

A **third party actor** means any person who is not or has not been in a domestic relationship with a complainant:

- who conspired with, was sourced by, or was used by a respondent to commit an act of domestic violence against a complainant; and
- who committed, or assisted a respondent to commit, an act of domestic violence against a complainant.

A respondent who uses a third party actor to

commit an act of domestic violence against a complainant is deemed to have committed such act personally.

NB: This does not prevent a complainant from applying for a separate protection order in terms of the Protection from Harassment Act against the third party actor (if the act of domestic violence also constitutes “harassment”, “harm” or “sexual harassment” as defined in that Act).

› What is a protection order?

A protection order is a court order issued by a Magistrates Court which lists various acts that a respondent is prohibited from committing in relation to a complainant (or related person). The purpose of the protection order is to prevent further harm (or acts of domestic violence) being committed against the complainant.

There are two types of protection orders: an interim and a final protection order. An interim protection order is granted temporarily pending

the hearing or consideration of the application for a final protection order. A final protection order is granted after the matter has been heard and considered in open court and applies indefinitely.

› Who can apply for a protection order?

An application for a protection order may be brought by the following people:

- Any person in a domestic relationship who has been subjected to domestic violence.
- Any related person who has been subjected to related person abuse.
- Any child who is subjected to or affected by domestic violence, with or without the consent of their parent/s or legal guardian/s.
- Any **functionary** or other person who has a material interest in the well-being of a complainant.





The DVAA introduced mandatory reporting obligations for specified categories of people. While these specific people do not have to bring an application for a protection order for any victim of domestic violence, they are lawfully required to report as follows:

- **Mandatory Reporting Obligations for Functionaries:** A functionary who reasonably believes or suspects that an act of domestic violence has been committed against a child, a disabled person, or an older person must report such belief or suspicion to a social worker or the police.
- **Mandatory Reporting Obligations for Adults:** Any adult who knows, or reasonably believes or suspects that an act of domestic violence has been committed against a child, a disabled person, or an older person must report such knowledge, belief or suspicion to a social worker or the police.
NB: *Any adult who fails to report their*

reasonable knowledge, belief or suspicion is guilty of a criminal offence, and may be sentenced to either: a fine; imprisonment (for not more than three months); or to both a fine and imprisonment.

» How do you apply for a protection order?

You may apply for a protection order either by email (NB: *after checking with the court whether the email system at that relevant court is operational*) or in person (at a Magistrates Court) by completing an application form and providing the following information:

	<u>Email Information</u>	
	<u>Application form</u>	



- Particulars of the complainant, such as: names, ID number (or date of birth), residential address, and contact details.
- Particulars of the person making the application on behalf of a complainant (if the application is brought on behalf of another person). The person making the application must indicate in what capacity they are bringing the application (e.g. family member, related person, social worker, health care professional, care giver, etc).
- Particulars of the respondent, such as: names, ID number (or date of birth), residential or work address (or any other address at which the respondent may be found), contact details (including any known details of social media platforms), and their relationship to the complainant.
- Details of the acts of domestic violence. This requires a history of any or all instances of domestic violence, and must include details such as: dates, times, location, nature

of domestic violence (or type of abusive behaviour), any available evidence or proof of the domestic violence (e.g. photos, witnesses, documents, video or audio recordings, medical records, etc.), and any harm or damages caused.

- Details regarding why the application should be dealt with urgently (if applicable).
- Nature of protection sought (i.e. the acts which the respondent should be prohibited from committing).
- Details of any children or other persons affected by the domestic violence.

The completed application form must be submitted to the clerk of the court (either by hand or by email). The clerk must present the application to a magistrate, who considers the application on an *ex parte* basis (i.e. the application is considered by the magistrate, without the respondent being notified of the application).

In terms of directives issued on 14 April 2023 (together with the DVAA) every domestic violence court is required to arrange for certain court personnel and a magistrate to be available to deal with applications for protection orders after-hours and on public holidays.

Interim Protection Order

If the magistrate is satisfied that: there is sufficient evidence to show that the respondent has committed or is committing domestic violence; the complainant is suffering or may suffer harm because of the domestic violence; and issuing a protection order is necessary to protect the complainant against harm, then they must issue an interim protection order (and a suspended arrest warrant).

The interim protection order must then be **served** on the respondent personally (e.g. by the police or the sheriff). An interim protection order only becomes effective once it has been served on the respondent.

An interim protection order must notify a respondent that they may attend at the Magistrates Court on a specified return date to show cause why a final protection order should not be granted to the complainant.

If the court does not issue an interim protection order, the complainant must serve the application for a protection order, together with a notice calling on the respondent to attend court on a specified return date to show cause why a protection order should not be issued.

Final Protection Order

On the return date, the complainant and respondent have an opportunity to present evidence (e.g. calling witnesses, presenting documents or photographs, etc.) to show why a final protection order should or should not be granted.

After hearing the parties and considering their evidence, the magistrate decides whether there is sufficient evidence to prove, on a balance of probabilities, that the respondent has committed or is committing acts of domestic violence. If the court is satisfied that there is sufficient evidence, it must issue a final protection order (and a suspended arrest warrant), which must be served personally on the respondent.

➤ **Summary of application process:**



› What else can you apply for?

Emergency Monetary Relief

When applying for a protection order, a complainant may also request the court to order the respondent to pay emergency monetary relief. **Emergency monetary relief** means either:

- compensation for monetary losses suffered by a complainant before or at the time of applying for a protection order as result of the domestic violence (e.g. medical expenses, loss of income, transportation costs, relocation costs, accommodation expenses, etc.); or
- maintenance of any child, disabled person or older person in the care of the complainant, where the respondent has a duty of care (pending finalisation of maintenance proceedings in the relevant court).

After considering the financial needs and resources of the complainant and the respondent, the court may order the respondent to pay emergency monetary relief and such order is enforceable as a civil judgment.

Domestic Violence Safety Monitoring Notice

To enhance the protections available to victims of domestic violence and ensure their continued safety, the DVAA introduced a **domestic violence safety monitoring notice**.

A complainant who shares a residence with a respondent, and reasonably suspects that the respondent poses a threat to their personal safety, may apply for a domestic violence safety monitoring notice.

After considering the application, the court may issue a notice directing the police to either contact the complainant privately on

any electronic communication platform, or to visit a complainant at their residence at regular intervals (for a period determined by the court), to ensure the continued safety of a complainant.

If the police are prevented from contacting or visiting the complainant, they may use reasonable force (e.g. breaking a door or window) to enter the residence and communicate privately with the complainant. The monitoring police officer must complete and file a report detailing every contact made with the complainant and the outcome of monitoring the complainant's safety.

Obligations for Electronic Communications Service Providers

Where it is alleged that an electronic communication (e.g. on social media) was used to commit an act of domestic violence, the court may direct an electronic communications service provider to, amongst other things:

- provide specified information, such as: the sender's details, and where the electronic communication originated; or
- indicate whether they can remove the electronic communication or disable access to the electronic communication.

» What if the parties do not attend court on the return date?

There are several possible scenarios in this regard:

- If the respondent does not appear at court on the return date, the court must issue a final protection order if the court is satisfied that the respondent was properly served and that the complainant has presented sufficient evidence to show that the respondent has, on a balance of probabilities,

committed or is committing an act of domestic violence.

- If the court has issued an interim protection order and the respondent appears but the complainant does not, or where both the complainant and respondent do not appear on the return date, the court must extend the interim protection order and the return date, and the clerk of the court must inform the parties of the extended date.
- If the complainant fails to appear on the extended date, the court may set aside the interim protection order.

» How do you enforce a protection order?

When the court issues a protection order they must also issue a warrant of arrest for the respondent. However, the execution of the arrest warrant is suspended subject to the respondent complying with the terms and conditions

of the protection order.

Failing to comply with the terms and conditions of a protection order (whether interim or final) is a criminal offence.

If the respondent contravenes the terms and conditions of the protection order, the suspension of the arrest warrant falls away and the police will be authorised to arrest the respondent. This ensures that the respondent complies with the protection order.

Importantly, no prosecutor may refuse to prosecute a person who:

- contravenes the terms and conditions of a protection order; or
- commits an offence against a person in a domestic relationship which involves either inflicting grievous bodily harm or a dangerous wound, or being threatened with the use of a weapon.

› How long does a protection order remain valid?

An interim protection order remains valid and in force until it is either replaced by a final protection order or set aside by a court.

A final protection order remains valid and in force indefinitely, or until it is set aside by a court.

Either party (i.e. complainant or respondent) may apply to request the court to set aside a protection order, or to vary (or revise) the terms and conditions of a protection order. The court will only grant the order if it is satisfied that:

- The other party has been served with the application to vary or set aside the protection order;
- There has been a material change in circumstances since the protection order was granted; and
- The application shows good cause for the variation or setting aside of the protection order.





Community Advice Offices South Africa

› About CAOSA

CAOSA is an organisation whose vision is a uniform and united community advice office sector in South Africa that is recognised, sustainable and ensures marginalised and vulnerable communities and individuals have easy access to justice, social services and legal support to effectively advance their human rights in South Africa. It aims to achieve this vision by:

1. Mobilising resources for the sector;
2. Strengthening the capacity of the sector;
3. Enabling regulatory measures for the sector to be developed; and
4. Enhancing the voice and advocacy of the sector.

CAOSA may be contacted on:
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› About our Pro Bono Practice

Werksmans Attorneys' dedicated pro bono practice provides free legal services to indigent or disenfranchised members of society in order to facilitate access to justice. Additionally, we advise and assist organisations whose operational objectives are to effect positive societal transformation by engaging in human rights, public interest or social justice-related work.

Werksmans Attorneys' signature pro bono project is a law clinic established in Diepsloot. Through this law clinic, we advise and assist members of that community with a diverse range of legal issues. Our Diepsloot law clinic operates weekly on Tuesdays and Thursdays.

If you have a pro bono enquiry, please email it to:
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