



# It's An Order! Protection Orders Must Protect!

A simple guide to understanding  
Domestic Violence rights, responsibilities  
and referral pathways



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A simple guide to understanding Domestic Violence rights, responsibilities and referral pathways is a revised edition of the IT'S AN ORDER! A Simple Guide to Your Rights written by Rolene Miller © MOSAIC, 2007

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Lead writers: Jody Lee Fredericks, Tarisai Mchuchu-MacMillan

Contributors: Kerryh Rehse

Graphic design: Jaywalk Design

Email: [admin@mosaic.org.za](mailto:admin@mosaic.org.za)

Website: [www.mosaic.org.za](http://www.mosaic.org.za)

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# Preface

MOSAIC is a community-based, non-governmental organisation (NGO) offering holistic and integrated programmes to prevent all forms of abuse and violence against women. We provide high-quality response services when incidences occur and support our clients through the process of healing and rebuilding their lives.

Abuse and gender-based violence (GBV) are at the core of rights violations of women and girls in South Africa. It is profoundly systemic and rooted in communities, institutions and cultures.

Our goal is to end violence against women and children in all its forms in our society.

Mosaic's mission is to provide support to survivors of domestic violence, activate resources, communities and systems, and collaborate with relevant stakeholders from government, civil society and community-based organisations to prevent domestic violence and advance safety within relationships, homes and communities.

To translate this mission into practice, MOSAIC ensures participation in networks, conversations and campaigns to proactively and effectively change the reality for women and girls exposed to violence and crime. This approach drives every pillar and enables survivors to develop agency, voice and courage to change their situations. MOSAIC's model has been to collaborate with survivors and empower them to empower others.

We recognise that patriarchy and unequal gender power relations are a root cause of violence against women and young girls. Mosaic's approach recognises that victims of violence have both urgent practical gender needs related to support, care and healing and long-term

strategic gender needs for substantive equality that includes freedom from all forms of gender-based violence and access to and control over resources to fulfil their potential.

A Survivor-Centered Approach informs our theory of change: A survivor-centred approach is the hallmark of quality GBV programming. It ensures that the rights and dignity of survivors are promoted and protected, and programme design meets survivors' exact needs and the needs of those most at risk of GBV. It empowers survivors and promotes their dignity and agency. Our organisational policies and structures and staff knowledge, skills, attitudes, and practice reflect this approach.

GBV is rooted in gender inequality, power imbalances and the structures and social norms that sustain such inequality. Operating from a survivor-centred approach empowers MOSAIC staff to always be aware of their own power and privilege when working in communities with victims. Ensuring programmes are designed and implemented to dismantle inequitable power structures between the organisation, communities and partners, men, women and children.

MOSAIC staff create space for survivors and participating communities to share experiences, knowledge, learning, and challenges meaningfully. We aim to elevate the voices of survivors and those at risk – including those with marginalised identities; women, youth, LGBTQIA+, undocumented migrants, and people with disabilities) in ways that are not harmful or stigmatising.

The **four pillars of our Theory of Change** are:

**PREVENTION** - Recognising unequal gender and cultural norms and harmful power relations drive violence against women - we aim to address and transform these norms through conscientisation, awareness-raising and behavioural change towards gender-equitable practices.

**SUPPORT** - Responding to the practical gender needs of survivors of violence through our continuum of care, access to justice and healing services. We respond to strategic gender needs, such as the right to live free from violence – through skills training, healing and empowerment.

**COLLABORATION** - Our approach to collaboration is informed by feminist principles of inclusion and participation. We collaborate with stakeholders across various sectors to ensure survivors of violence can access care, support and justice.

Our strategy, programming and services are survivor-led.

Collaborating with other feminist leaders and women's groups – raising awareness about intimate partner violence (IPV) and intersections between VAW and VAC.

**ACTIVATION** - Women's economic empowerment through Skills Training and leadership development.

We seek out intersectional approaches that recognise that marginalised women have multiple experiences of inequality and discrimination. We focus on activating processes, platforms and legislative changes that bring stakeholders together to collaborate to end all forms of violence against women.

Legislative and policy changes that will change survivors of violence's position and experience of substantive equality.

MOSAIC's registered head office is in Cape Town, South Africa, with our Court Support Services extending to the Cape Winelands, Eden District, Tshwane and KwaZulu-Natal. The SAFE-PR project is currently being piloted in Cape Town in the communities of Philippi, Paarl and Mitchell's Plain.

# Foreword

The It's An Order guidebook is inspired by all survivors of domestic violence (DV) those who continue to grow and heal each day; those who have been let down by the care and justice system and those whose lives were ultimately taken by the perpetrator of their abuse. We acknowledge each of your journeys and your contribution in helping understand the problem and strengthen the resolve to truly advance safety in relationships, homes and communities.

The Its An Order guidebook is a three-part guide aimed at providing practical information to victims of DV and first responders to DV incidences and reports about rights, responsibilities and the law. The guidebook has been developed to provide understanding of the law as related to the Constitution and how it must be applied to any person whether a victim of DV, a supporter of someone experiencing DV and/or a first responder or practitioner in the field.

The booklet forms part of the SAFE-PR: STRENGTHENING ACTORS FOR EFFECTIVE PREVENTIVE RESPONSE project. The project creates local multi-stakeholder platforms that are coordinated to work together to prevent domestic violence through strengthening response systems to advance safety in relationships, homes and communities. The main



**Protection Orders MUST Protect**

goal for SAFE-PR is to provide knowledge and increase capacity and skills for first responders to domestic violence in the multi-stakeholder eco-system of response through information and training in a way that enables victims to access care and justice. This will result in domestic

violence prevention as care and justice actors strengthen the system by implementing laws and policies through a gender transformative lens of equality and human rights.

We believe that first responders to domestic violence are the key link to ensuring that the care and justice system is functional and effective to ensure that victims, especially women and children are safe in their homes, relationships and communities.

A responsive first responder, who understands laws, policies through a gender transformative lens is equipped and skilled to do no harm when responding and will connect all mechanisms in the system to prevent further and violence. Through MOSAIC's research<sup>1</sup>, 29 years of implementing services and coordinating the SAFE-PR platforms, it is clear there is a lack of capacity of frontline responders to receive victims of domestic violence and other forms of GBV, in a victim-centered way. Through the dissemination of this booklet and training, we envisage that a culture of "do no harm" will be cultivated through constant education and knowledge acquisition by first responders to DV and empower survivors to claim their rights.

This revision of It's An Order! Protection Orders Must Protect! is a result of the deliberations with SAFE-PR stakeholders who are committed to improving their practice for the advancement of survivors' safety. Their commitment to building multi-stakeholder platforms with MOSAIC and being very transparent about challenges in capacity that they face as first responders is what inspired this revision and design.

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1 Rehse, K., Thobane, M., Gihwala, H., Artz, L., Waldman, J., Solomons, N., Maksudi, K., Karimakhwenda, N., Ngubane, M. & Mchuchu-MacMillan, T. 2021. Protection orders must protect: exploring the implementation of the Domestic Violence Act (116 of 1998) at local Magistrates' Courts and police stations in Cape Town and the Cape Winelands. MOSAIC Training, Service and Healing Centre for Women, Cape Town.



MOSAIC acknowledges that the amendment of the Domestic Violence Act 116 of 1998 finally happening after more than twenty years of no revision is very important. The enactment of the Domestic Violence Amendment Act 14 of 2021, forms the base of the revision of the IT'S AN ORDER booklet. We are mindful that the response system to DV and structures of implementation are quite weak, however we will continue to activate implementation through coordinating multi-stakeholder collaborations and advocating for accountability structures. MOSAIC and partners will work together to strengthen and improve the care and justice system to improve the effectiveness of protection orders.

MOSAIC is very grateful to our donors who continue to support the work to prevent violence against women and are committed to support innovative ideas that might help to advance the solutions we need to advance safety in relationships, homes and relations.

We dedicate this guidebook to all women and children in our country- we hope that the contents of this booklet will empower you with knowledge of your rights and that our collective efforts to ensure all first responders know how to effectively respond and act in a way that protects us all will lead to our safety in relationships, homes and communities.

Advocate Tarisai Mchuchu-MacMillan  
Executive Director  
MOSAIC

It's An Order! Protection Orders Must Protect!

# First Responders Guide



# Introduction

Domestic violence is a pattern of behaviour in any domestic relationship used to gain or maintain power and control over another person. Acts of domestic violence can range from subtle acts of abuse, which can be challenging to identify, like emotional abuse, to more apparent acts like physical abuse, which is easier to identify. Domestic violence can happen to anyone regardless of their age, race, gender or sexual orientation. People who have experienced domestic violence usually deal with some form of trauma that is hurtful to them. Therefore, dealing with people who experienced domestic violence will require being sensitive, sympathetic, empathetic, and non-judgemental.

This booklet is intended for first responders who assist people who experience domestic violence in their line of duty.

In this booklet, we will guide you on how to receive and assist people who have experienced or are affected by domestic violence.

## First Responders include:

Police (SAPS)



Neighbourhood Watch/  
CPF



Health Practitioner



Department of Social  
Development (DSD)



Magistrate



Clerk of the court



NGO Representatives



Traditional Leaders



Religious Leadership





# Preparation For The Consultation

## Private Space

In some instances there may not be a private space available, for example, court officials, SAPS members and counsellors often share their office space with other colleagues. If you don't have a private space, lower your voice when speaking and try not to repeat sensitive information too loudly. Another example could be prosecutors who often meet with their clients in the corridors of the court - in this case, the prosecutor could find a quieter space down the corridor to talk to their client.

## Know What Services You Can Provide

Know what you can and cannot offer in your role as a first responder. The type of assistance you can offer depends on your role as a first responder. For example, counsellors provide people with emotional and psychological support to assist people with tools to cope and heal from the trauma they experienced. Their role does not allow them to represent the person in court as a legal representative.

Be clear on what you can do and let the client know that you will refer them to the appropriate resource when necessary. Doing this will minimise unrealistic expectations from the client and assist you in feeling less overwhelmed and helpless when you cannot provide an essential service personally to the client.

## Up-To-Date Knowledge

You will be giving the client information on how to address their particular issue. So it is important to keep up with the changes in law, policies and procedures to make sure that the information you provide is correct.

**There will be times when you don't know the answer to a client's questions. This is okay. Let the client know that you are uncertain of the solution. In this case, one can refer the client and find out the answer at a later stage.**





# Consultation With The Client

## Introduction And General Information

Introduce yourself and explain your role. Your aim should be to draw out information from the client, which will assist you in providing the client with the correct information and services to help the client in their matter.

Inform the client that you will be asking them direct questions later in the consultation so that you have a clear understanding of the facts of their case. Informing them upfront will prevent the client from feeling like your direct questions is an indication that you don't believe them.



**Let the client know whether the consultation is confidential and whether you have a mandatory obligation to report abuse.**

For example, do you have a mandatory duty to report whether a child is exposed to domestic violence? The client might feel reluctant at first to provide you with information regarding a child. However, as the consultation unfolds and trust is built, the client will be more likely to provide you with information regarding a child. If you find the child is exposed to domestic violence, you can then tell the client that you have to report the matter. In this case, the client will not feel betrayed as you were honest with them at the beginning of the consultation.

If the client is applying for a protection order, let them know that part of the information they provide will be placed in a statement given to the Magistrate and the abuser. Let the client know that you will assist in only identifying the relevant information in the statement.

## Interviewing the client

The style for interviewing the client should be conversational. A conversational tone is when you listen to the person speak and ask questions relating to what they have said. This will assist in preventing the person from feeling like they are in an interview and are being cross-questioned.



**Start with easy questions. Examples of easy questions,**



*What is your name?*

*Where do you live?*

*Are you employed? If, so where do you work?*

**After that, ask open-ended questions. Examples of open-ended questions:**

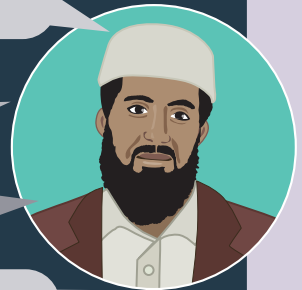
*Can you take me through what happened?*

*What is the relationship between you and the person abusing you?*

*What was the circumstance around what happened?*

*Were there any threats made against you?*

*Has the person done this before?*



If you only ask direct questions, the person will respond to only what you ask. And will not provide details on what you didn't ask. This can result in missing essential information like;

- Not knowing the extent of the types of abuse the person is experiencing.
- The client may not tell you important information because it does not match the questions you asked.

## Listen To The Client's Story

Try not to interrupt the conversation or disturb the person when they are talking. This is the time to listen attentively to establish the types of domestic violence the person has or is experiencing. Allow the person to tell their story in a narrative form and in context. Be patient during this process. If the person senses that you do not have time or interest to

listen to them, they might edit the information, which will limit your understanding of the incident. Hearing the story as a narrative gives you a better understanding of the impact of the abuse on the person.

**Narrative means the description of their story.**



**Note:** Trauma can cause memories to be out of order or have gaps. When the person is allowed to tell their story uninterrupted, they can sort the memories in ways that result in a more complete and accurate account.

Do not assume what the person will say or think you know what they experienced. Be curious in your approach, and let the person know that you need to understand more about the situation to provide them with the correct assistance.

As you listen to the story, ask clarifying questions. Think about whether there is a gap in the story you need to ask about.

## Interpreting The Person's Story

The client might not be aware that they are experiencing a range of different forms of abuse. Some forms of abuse are normalised and are more challenging for the person to identify. Therefore you will have to listen, identify the types of abuse the person is experiencing. For example, the client said that her husband had moved out and is living with another woman. The husband owns the house she lives in. Although she understands he has the right to visit unannounced, his unannounced visits cause her great anxiety. He would yell and proclaim she is a terrible wife especially if there are dishes in the kitchen, the house is untidy or she has friends visiting. She said she wishes there would be some law that says he has to notify her when he visits the house. This way, she can make sure that the house is tidy when he visits. This client believed that because her husband owned the house, despite not living in the property, he had the right to visit when ever he wanted to, and, in the process, emotionally and psychologically abuse her.



**NB: In South Africa, domestic violence has a broad definition. It is essential to know what domestic violence is so that you can help identify the different forms of domestic violence and assist the client in receiving the correct remedy. Please refer to page 34 in the guide for an explanation of the nature and forms of domestic violence.**

## Questions That Shouldn't Be Asked

Don't ask questions in a hostile voice and unfriendly manner. Don't ask questions that blame the victim or show that you are judging the person. How you ask the questions can impact the experience of the person.

Here are a few examples of questions you **shouldn't** ask:

*Don't ask...*



*Why are you with the person if they hit you?*

*What did you do to cause them to hurt you?*

*How could you let them do that to you?*

*How many times are you going to let him do that?*

*Are you wanting to report your very own daughter?*

All of the above suggests that the victim was the reason for the person abusing them. For example, why are you with them if the person hit you? This question indicates that the victim is to blame for the abuse by staying with the abuser.

**Victim Blaming** means to be blamed for someone else's actions. The victim is being told they are responsible for the acts of domestic violence which happened to them.

Here are reasons why people who experience abuse are unable to leave the relationship:

- The person might not have an alternate place to stay and leaving can mean becoming homeless. There are not sufficient shelters to accommodate people who are experiencing domestic violence.
- The person fears that the abuse will escalate if they seek assistance.
- They share a life together, shared finances, shared friends and find it very difficult to leave the life which they built.
- The person might not have the support of family and friends because they have sided with the abuser.
- The person might feel that the relationship is a mixture of good times, love, hope, and abuse. This confuses the person who hopes that the relationship will get better over time.
- The person blames themselves for the abuse.

There are many reasons why the person might not leave the relationship. Blaming someone for staying in the relationship is never okay. Just because the person remains in the relationship does not mean they are the cause of the abuse. Remember, your job is to identify the types of domestic violence the person is experiencing and recommend appropriate remedies. You are not the judge, and the client is not on trial.



After listening to the story, you can ask direct questions to get more clarity. Examples of **direct questions**.



*When and where did the incident take place?*

*How often does the abuse occur?*

*Were there any other people present?*

Sometimes, the person withholds information during the consultation. People withhold information because they feel embarrassed, have low self-esteem, feel guilty, shame, and have feelings of helplessness and hopelessness. The person may withhold information because:

- They do not want the abuser to be arrested.
- You might be the first person the victim has told about the abuse, and they fear being judged.
- They fear retaliation from the abuser, family or friends.
- Their family and friends might inform the client that she needs to keep what happens in the home private.

There will be times when the person seems more upset by the incident than the incident appears to justify. Don't assume that the person is over-reacting. Instead, ask follow-up questions. An example of a **follow-up question**,


*What does that incident mean to you?*



For example, a woman was extremely angry when her ex-husband refused to pay maintenance for their child. She began to sob and said he had hurt her all those years and now has another family. He has to pay child maintenance. The counsellor thought the woman was having a hard time dealing with her ex-husband moving on. When she was asked what makes her sad about her husband not paying maintenance, she said that her husband chased her around the house, and when he caught her, he would hit her. The bruises were so nasty that she had to stay in bed and indoors for days at a time. One day he dragged her into the backyard and threw her into a shallow grave which he dug. He told her that is where she belonged. Her son came home early from school, and saw her lying in the shallow grave crying with her husband standing over her. Her child screamed. She said she was frightened for her child, but her husband just stopped and walked away. She was embarrassed that her son saw her like that. The look in her sons' eyes made her feel so guilty. That was the first time her son saw her being physically abused. She said that the least her husband could do was pay the R700 child maintenance.







*Here is some information on support services.*

# Provide The Service And/Or Refer The Client

**This is the last stage in the consultation process. At this stage, you should have an understanding of the person's needs. You are now able to provide the following;**

- ✓ Provide practical care and support, responding to their concerns but not over-step their decision-making process.
- ✓ Offer comfort and help to alleviate or reduce their anxiety.
- ✓ Offer information and help them to connect to services and social supports.

**Remember that there will be times that you cannot assist the person, and that is okay.**

# Return Client

It is not unusual for the client to return for a follow-up or to receive the same or a similar service as before. When the client returns for the same or similar service as before, do not judge the person and be reluctant to help them again.

## Examples of statements that **shouldn't** be said:

*Don't ask...*



*This is what happens when you don't listen to people who are trying to help you.*

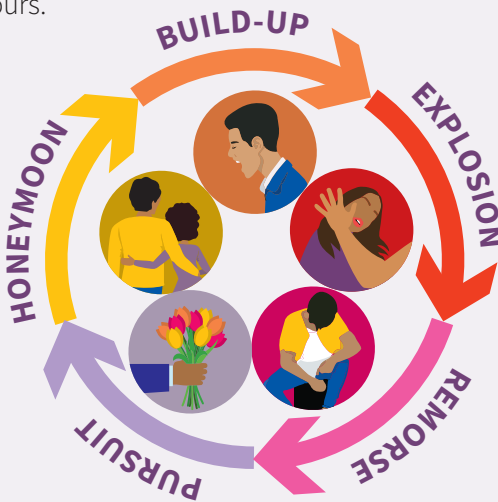
*I will not help you again if you don't follow the advice given.*

*This is your own fault. If you had followed my advice in the first interview, this would not have happened again.*

**Instead, tell the person that abuse is never okay and that you will try your best to assist them again.**

In situations where the person returns for the same assistance it's good to understand the cycle of abuse. A cycle of abuse is predictable behaviour that happens in abusive relationships. The abusive relationship is not limited to romantic relationships and can include parent and adult child, adult brother and sister, aunt and cousin etc.

The cycle of abuse is best explained by stages, these are: the build-up of tension, followed by the violent incident (explosion). This is often followed by a period where the abuser shows remorse. They will apologise and continue to pursue the person, often with kind gestures. Finally there is a period of calm, the honeymoon stage, where all seems well in the relationship. The cycle can develop over many years, days, or even a couple of hours.



BUILD-UP	EXPLOSION	REMORSE	PURSUIT	HONEYMOON
Tension builds up in the perpetrator for various reasons. The recipient tries without success to defuse the situation and feels helpless.	A violent outburst occurs. These outbursts begin to intensify over time.	Showing remorse, whilst at the same time justifying the outburst, the perpetrator asks for forgiveness, which is often given.	If the recipient forgives, but is cold and distant, the perpetrator tries to win back affection by buying gifts and being loving. Threats of suicide can occur.	If reconciliation occurs, the couple may experience an intense, intimate relationship... until the cycle begins over again.

Research shows that it will take about 7 attempts for the person to leave the abusive situation.

For example, a client had an interim protection order granted in June 2018 against her 28-year-old son. The client did not attend the court date, and therefore the protection order was not made final. In November 2018, she wanted assistance to apply for another protection order. She said that there must first be an incident that happens which pushes her to seek help. She said that everything was peaceful until her son threatened to hit her because she didn't have any money to give her. He then broke furniture and took the younger children's toys to sell for drugs.

When the person returns for the same assistance, you should not judge them. Instead, be patient, assist them.

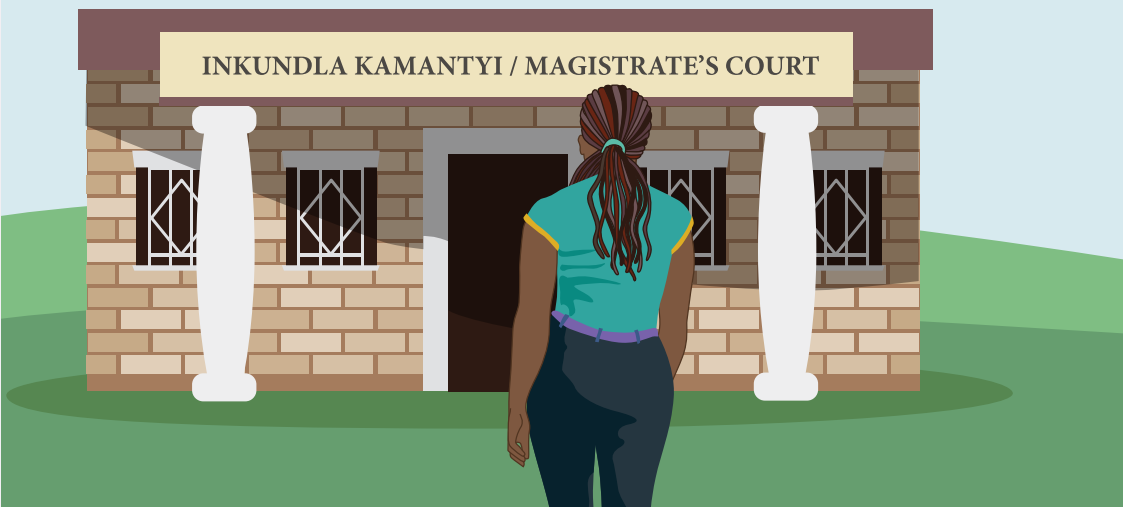
# A Guide To The Domestic Violence Act



The Domestic Violence Act (DVA) is the law that deals with domestic violence in South Africa. The South African Government recognises that domestic violence is a severe social problem that takes on many forms and that domestic violence may be committed in a wide range of domestic relationships.

The purpose of the DVA is to provide victims of domestic violence with the best possible protection from domestic abuse by intervening to stop the abuse. This law also commits the State to prevent and stop domestic violence.

The new amendments to the Domestic Violence Act aim to address the practical challenges and gaps that victims have experienced since the passing of the 1998 DVA. It also aims to make sure that the law is accessible, protect victims and guarantees them the services they need. The amendments aim to enhance the application of the Domestic Violence Act.



# Applying For A Protection Order

## Step 1: Establishing Domestic Violence

Establish whether one is in a domestic relationship as defined in the Domestic Violence Act and can apply for a protection order. This is an important first step to ensure that one uses the appropriate law in the relevant court.

**When someone doesn't meet the requirements to apply for a protection order in terms of the Domestic Violence Act, they can apply for a protection order in terms of the Protection from Harassment Act.**

**Note:** In this guide, we will be focusing on the application for a protection order in terms of the Domestic Violence Act.

## Who Can Apply For A Protection Order?

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

Another person can apply for a protection order on behalf of the abused person if they are:

- 1) **A Functionary.** A Functionary is a 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.
- 2) **A concerned person who is interested in the abused person's well-being**—an Example, a friend, a family member etc.

**Note:** A child of any age can apply for a protection order without consent or assistance of a parent, guardian or any other person.

When another person applies for a protection order on behalf of someone else, they must have the abused person's written consent except in circumstances where the abused person is-

- A child and the court considers the application to be in the best interest of the child OR
- A person the court thinks cannot provide the necessary consent.





## Who Has A Duty To Apply For A Protection Order?

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

Person's who must report domestic violence are:

- An adult person
- A 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 The South African Police Service (SAPS).**



What will happen if the functionary or any other person reports that a person with a disability, an older person, or a child is being abused? After the investigation, it is found to be untrue?

Will they be held liable?

If their belief or suspicion is made in good faith, they will not be held liable. This means that they cannot be sued civilly, face criminal prosecution, and cannot be disciplined at their workplace.

## What Is A Domestic Relationship?

A domestic relationship means a relationship between the abused person and the abuser in any of the following ways:

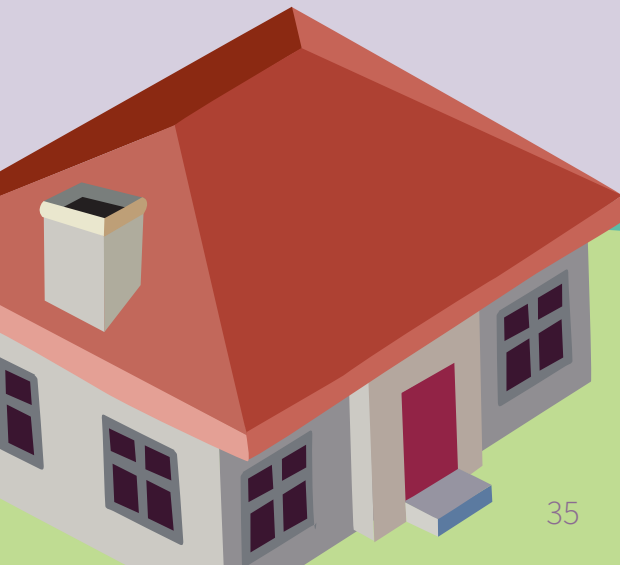
- The abused person is or were married to the abuser, including marriage according to any law, custom or religion;
- The abused person (whether they are of the same or the opposite sex) lives or lived together in a relationship with the abuser.
- The abused person and the abuser are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
- They are your family members related by consanguinity, affinity or adoption;
- The abused person is or were in an engaged, dating or in a customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration with the abuser, or
- The abused person is or were in a close relationship with the abuser who shares or shared the same residence.

## What Is A Close Relationship?

A close relationship means a relationship between the abused person and any other person taking the following into account:

- The degree of trust between the persons;
- The level of each person's dependence on, and commitment to, the other person;
- Length of time the relationship existed;
- Frequency of contact between the persons; or
- The degree of intimacy between the persons.

Examples of a close relationship, a friend, a neighbour who is a good friend, the abused person's romantic partner, etc.



**Consanguinity** means people sharing a blood relationship with another person like a brother and sister, father and son, grandfather and granddaughter, niece and aunt etc.

.....

**Affinity** means a relationship between two people because of marriage. Examples are bother-in-law, mother-in-law, husband and wife etc.

.....

An **actual relationship** is when the parties agree that there is a relationship.

.....

A **perceived relationship** is when one person thinks they are in a relationship with another, but they are not.

## What Is Domestic Violence?

Any of the following is an example of domestic violence:



### Physical Abuse

When the person uses force to harm the abused person physically, examples include: shoves, kicks, slaps, stabs, striking you with an object, shooting the abused person.

Physical abuse also includes when the abused person's freedom is threatened or taken away. For example - they cannot leave the house unless the abuser gives them permission.

Physical abuse also includes when the abuser gives, or threatens to give the abused person, or withholds any drug, medication or chemical substance, or any other substance, without your consent, which affects or may affect your judgment or abilities or is harmful to you your health or well-being.



### Sexual Abuse

Sexual abuse is any conduct that abuses, humiliates, degrades or otherwise violates your sexual integrity, irrespective of whether or not such conduct constitutes a sexual offence as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);

Examples of sexual abuse:

- Rape (forced penetration)
- Sexual assault (vaginal, anal or oral)
- Sexual assault using objects; sex toys, broken glass, bottles, etc

- Forcing sex in ways that hurt or following a physical beating
- Forcing sex with others
- Forcing sex in front of others
- Making the person watch or mimic pornography
- Unwanted fondling
- Videoing / photographing another person doing sexual acts
- Pinching or biting breasts and buttocks
- Name-calling, e.g. frigid, whore
- Criticising someone sexually
- Forcing another person to strip, or forcefully stripping them
- Sadistic sexual acts
- Making sex conditional on another person's behaviour
- Minimising or denying another person's feelings about sex or sexual preferences
- Forcing or coercing another person to act out fantasies they are not comfortable with



### Emotional, Verbal or Psychological Abuse

Is any degrading, manipulating, threatening, offensive, intimidating or humiliating behaviour towards you that causes mental or psychological harm, including—

- Insults, ridicule or name-calling.
- Threats to cause emotional pain.
- The abuser displays obsessive possessiveness or jealousy. For example- the abuser questions your whereabouts. The abuser constantly asks about the people who like your Instagram pictures.

- The willful damaging or destruction of any property close to the abused person. For example- the abuser picks up and throws the chair next to the abused person.
- To harm or threaten to harm a household pet or other animal whose welfare affects your well-being.
- To disclose or threaten to tell the abused person's sexual orientation or other private information to others without your consent.
- To threaten the abused person with the death or injury of another person or damage another person's property.
- Threatens to commit suicide or self-harm.



## Economic Abuse

Economic abuse means being deprived of economic or financial resources to which the abused person is entitled under law or required out of necessity. Examples of things that the abused person may need;

- Household necessities like money for water, food, electricity and rates.
- Education expenses.
- Mortgage bond repayments or payment of rent in respect of the shared residence or accommodation;

It is also economic abuse when the abuser steals the abused person's money, sells their possessions without their permission, takes their wages, and coerces them into signing a legal document, e.g., selling a joint property.



## Intimidation

The abuser forces the abused person to do something or stops them from doing something they have a lawful right to like:

- Physical violence or damage to property belonging to the abused person or any other person.
- Threats of physical violence or damage to property belonging to the abused person or any other person.
- To deprive the abused person or any other person of your freedom or threaten to do so.
- Communicate a threat or cause the abused person to receive a threat, which induces fear of physical violence, or damage to property belonging to the abused person or any other person through electronic communication (e.g. through emails, WhatsApp, social media or SMS).



## Harassment

Harassment means the unreasonable—

- Following, watching, stalking, pursuing, or approaching the abused or related person.
- Loitering outside of or near the building or place where the abused person or a related person lives, works, carries on business, studies or happens to be.

The above actions by the abuser instil the belief that the abused person or a related person may be harmed or your property may be damaged.

***Unreasonable***  
*means there is no valid reason for the person to behave a certain way.*

Did you know that harassment also happens under the following circumstances?

- When the abused person is repeatedly being contacted against their will by the abuser through electronic communication services like SMS, Miss calls, DM over Instagram, WhatsApp regardless of whether or not—
  - (i) A conversation starts or
  - (ii) Any information is sent to you.
- The abuser repeatedly and against the abused person's will sends or delivers packages, communications or other objects to you, or leaves them where they may be found by, given to, or brought to your attention.
- The abuser accesses the abused person's electronic communication or other forms of communication without their consent. For example, the person has access to the abused person's email password and reads their email without permission.
- The abuser monitors or tracks the abused person's movements, activities or interpersonal associations without their consent, including technology. For example, the abuser has a tracking app installed on the abused person's phone to see where you are, or they monitor your movements through your social media accounts and then show up at places that you attend without your consent.



When the abuser sends an electronic communication to the abused person or causes them to receive a communication, which—



- Is abusive, degrading, offensive or humiliating;
  - Violates or offends your sexual integrity or dignity
  - Inspires the belief in you that you or a related person may be harmed or their property may be damaged;
- OR

When the abuser sends an electronic communication or makes a communication available to another person concerning the abused person, which—

- Contains information of a private nature;
- Violates or offends your sexual integrity or dignity;
- Is abusive, degrading, offensive or humiliating; or
- Inspires the belief in the complainant that they or a related person may be harmed, or their property may be damaged;

For example, the person shares a nude picture of the abused person to their friends without your permission.



### Sexual Harassment

- Unwelcome sexual attention from the abuser who knows or ought reasonably to know that such attention is unwelcome;
- Unwelcome behaviour, suggestions, gestures, remarks made, communications sent or delivered, or electronic communications disclosed to the abused person.
- Implied or expressed promise of reward made to the complainant if they comply with a sexually-oriented request; or
- 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 Abuse

Related person abuse means to:

- Threaten you with causing physical violence to, or the damage of the property of, a related person;
- Threaten a related person with physical violence or causing damage to the property of such a person or an abused person.
- Commit an act of physical violence against or cause damage to property of a related person.

**Related person** means any member of your family or household or a person in a close relationship with the abused person.



## Spiritual Abuse

Spiritual abuse means:

- That the abuser is advocating hatred against the abused person because of their religious or spiritual beliefs, which can cause harm to them.
- The abuser prevents the abused person from exercising their constitutional right to freedom of conscience, religion, thought, belief and opinion, including openly practising your religion, beliefs or spirituality.
- The abuser manipulates the abused person's religious or spiritual convictions and beliefs to justify or rationalize abusing them. An example, using the scriptures from a religious book to humiliate the abused person and make them feel unworthy or justify their use of physical violence.



## Damage To Property

Damage to property means:

The intentional damaging or destruction of property, or

threats to damage or destroy property belonging to the abused person, or in their possession, or in which you have a vested interest.



### Elder Abuse

Abuse of an older person that happens in a domestic relationship.

**An older person** is defined as women 60 years or older and men 65 years or older according to the Older Person's Act 13 of 2006.

### Coercive Behaviour

This means to force the abused person from doing anything they have a lawful right to do or do anything they have a legal right to say no too.



### Controlling Behaviour

Means behaviour towards the abused person that makes them dependent on, or subservient to, the abuser and includes-

- Isolating the abused person from sources of support;
- Abusing the abused person's resources or capacities for personal gain;
- Depriving the abused person of their need for independence, resistance or escape; or
- Regulating the abused person's everyday behaviour.



### To Expose A Child To Domestic Violence;

This means intentionally causing the child to hear, see, or experience domestic violence.

**Subservient** means to listen and obey everything the abused person tells you to do without asking any questions.

# Step 2: Applying For A Protection Order

## Where can I apply for a protection order?

The abused person can **ONLY** apply for a protection order at a Magistrates' Court.

A person can go to the police station to report the abuse and/ or open a criminal case. This is not the same as applying for a protection order. The police will tell the person to go to their nearest Magistrates court to open a protection order.

The abused person can apply at their nearest Magistrates' Court OR can apply online by submitting their application to the electronic address of the court, which has jurisdiction over your matter.

**Jurisdiction** means the geographical area in which the court can hear the case.



**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.

**Example:** If the abused person lives in Wynberg and works in Cape Town. You can either go to the Wynberg Magistrates' Court or the Cape Town Magistrates' Court.

An the application for a protection order should be made during ordinary court hours – Court hours are usually 9 am- 3:30 pm weekdays.

If they apply online, their application can be sent at any time but will only be attended to during ordinary hours.

They can apply for a protection order outside court hours if they can show the court that they are suffering or may suffer harm if their application is not dealt with immediately.

When the abused person arrives at court, they must go to the Domestic Violence section. They must ask to speak to the clerk of the domestic violence court and tell them they want to apply for a protection order.

They will have to complete an application form (online or at the court).



They will need the following information:

- ✓ Details like their **ID number, address, contact numbers, and employment details.**
- ✓ They will need **details of the person or people abusing them-** their name(s), where they live, where they work. Give as much information as possible because this will help the court and the police. This will help them to locate the abuser and correctly identify the abuser.
- ✓ Give a **written sworn statement** on what they are experiencing. This is called an affidavit. They must include as much information and detail about the history and the type of abuse you experienced.  
*(If they need more space to write than what is available on the form, they can request more paper from the clerk of the court.)*
- ✓ Write, **any weapons** that have been used or **that the respondent has in their possession.**
- ✓ **Provide any supporting documents** to help the court. This may include affidavits from people who saw you being abused, photos, doctors' notes etc. If there are no supporting documents, the person can still apply for a protection order because the court will hear their case even when they don't have supporting documents.
- ✓ You should **give reasons why your application may be urgent** by explaining how you are or will be suffering harm as a result of the domestic violence.
- ✓ If you do not understand any question in the form, **ask the court clerk for help.**
- ✓ Ask for the **kind of help you want from the protection order.** An example, if you don't want the abuser to enter your home, you must write it in the form.
- ✓ You will **sign the application form** once you have completed the form.

**If the complainant does not have the details of the respondent. The respondent used electronic communication to abuse the complainant? The complainant received numerous messages on WhatsApp, and they don't know to whom the number belongs.**

In this process, **you** will be called the **complainant**, and the **abuser** will be called the **respondent**.

The complainant can inform the court and request that the court directs the electronic service provider (such as MTN, Cell C, Vodacom, Telkom, Google, Facebook, Instagram, Tiktok, etc.) to provide information that can assist in identifying the abuser and/or whether the abuser sent the message.

The court can direct the electronic service provider to give the following information.

- The electronic communications identity number from where the electronic communication originated.
- The name, surname, identity number and address of the person to whom the electronic communications identity number has been assigned.
- Any information which indicates or can be of assistance that the electronic communication was or was not sent from the electronic communications identity number of the person to the electronic communications identity number of the complainant.

The electronic communication service provider will **have 5 court days** to respond to the courts' request.

**Note:** Once the electronic service provider gives the court the required information, they must notify the abuser within 48 hours and provide the respondent with the information they provided the court.

What if the complainant wants the content the respondent posted online to be removed?

The court can order the electronic service communication provider to remove or disable access to the online content.

Court days means, weekdays only and excludes all public holidays. When counting court days, one starts counting from the following day onwards. For Example, if the complainant handed in their application on Tuesday. They will begin counting from Wednesday, then Thursday, then Friday, exclude Saturday and Sunday, then include Monday and Tuesday.

**Note:** The complainant will be responsible for paying the electronic service provider for the information they provide to the court and disabling or removing the online content. If they cannot afford the costs, the court can direct the State to pay. At a later stage, the court can order that the respondent reimburses the complainant or the State for the costs paid.



## Step 3: The Interim And Final Order

**Note:** An interim protection order is a temporary order that the court issues when a decision is reached on the initial application. The complainant will have this order in the meantime while they wait for the final order to be granted. This is to make sure that they have immediate protection from domestic violence. Because the interim protection order is urgent, the respondent does not have to be present at court for the interim order to be granted. The respondent will have an opportunity to present their side of the story at a later stage.

The court clerk will give the application form and all the supporting documents to the Magistrate. The Magistrate will consider and decide based on all the reasons given why the application is urgent. The Magistrate will consider whether;

- They are suffering or may suffer harm as a result of the domestic violence and
- Whether the protection order is immediately necessary to protect them from harm.

If the Magistrate grants the interim protection order, the court clerk will notify the complainant that the interim protection order has been granted. The interim protection order must be served on the respondent.



## What happens if the court does not grant the interim protection order?

The court clerk will notify the complainant that their interim order has not been granted. The complainant will still have an opportunity to appear before the Magistrate for a protection order. The court clerk will give the complainant a court date on which the complainant and the respondent must appear in court. The respondent will be served with the application and will be asked to show cause why the protection order should not be granted.

**Show  
cause means  
to give  
reasons.**

The term “service” means to deliver the documents.

The service of any documents in this Act must be given to the affected persons immediately. It can be served at the person’s home, work, place of business or study. The clerk of the court will direct WHO must deliver the documents. The complainant cannot personally deliver the documents to the respondent. Usually, the court clerk will direct the Police or the court sheriff to serve the documents.

If the court clerk directs that the Police must deliver the protection order, then you may be asked to take the protection order to the police station. Once the Police receive the protection order forms from the complainant, the Police will personally serve the protection order on the respondent.

If the complainant shares a residence with the respondent, the documents must be served personally on the respondent. The complainant must not accept service on behalf of the respondent. This is to make sure that the respondent receives the necessary documents so that they know to stop the abuse.

**You can help SAPS or the court sheriff identify the abuser by providing photos.**

## What happens if the respondent avoids receiving the service of documents?

The court can make an order allowing that the documents be served electronically.

**NB:** The protection order is only in force and effect from the time the order's existence and content have been served on the respondent.

The interim protection order will have a return court date on which the complainant and the respondent must appear at court.

**NB:** The interim protection order will remain in force until the court sets it aside.

## Domestic Violence Safety Monitoring Notice

A domestic violence safety monitoring notice is a new provision in this Amendment Act. The notice aims to prevent further violence when a complainant and respondent share a residence.

When the complainant share a residence with the respondent and fear being harmed, they can apply for a safety monitoring notice. The domestic violence safety monitoring notice will only be in operation for a specified period, for example, for 2 months.



## When can the complainant apply for a domestic violence safety monitoring notice?

- At the same time when they apply for a protection order, or
- At any stage before the court issues a final protection order or discharges their matter or
- Anytime after the interim protection order or final protection order has been granted.

This application can be submitted online or with the clerk of the court.

In the application form the complainant will have to explain why they believe the respondent will harm them. The complainant can provide affidavits from other people who know about the abuse.

## The court will consider their application and grant the Domestic Violence Safety Monitoring Notice if the court is satisfied that:

- a) There are reasonable grounds for believing that the complainant and the respondent share a joint residence; for Example, a rental agreement is in both names. A store account with the respondent's address matches the complainant's address, an affidavit from the complainant stating that the respondent lives with them, and
- b) There are reasonable grounds to suspect that the respondent poses a threat to the complainant's safety.

## What can the court order with the Domestic Violence Safety Monitoring Notice?

The Police Station Commander in the area where the complainant lives will be informed of the court order and will be instructed by the court order to do the following:

Appoint a police officer for the specified period to:

- Contact the complainant at regular intervals using an electronic service. This means the police can email, WhatsApp, or send the complainant a text message. The complainant will have to message the officer back to let them know they are okay. If they do not message the officer back, this will signal to the officer that they may need help, and the officer will go to their house.
- Visit their place of residence at regular intervals, to communicate with them in private and establish whether they are okay.

If the officer goes to the house and the respondent refuses to let them see the respondent. Then the officer will insist on seeing the complainant and will overcome any resistance to make sure that the complainant is okay. This means that the officer will use force to break down the door if necessary.

When the domestic violence safety monitoring notice expires, the police will send a report to the court, which will be kept at the court.



## Appearing at Court for the protection order?

At the return court date, the complainant and the respondent will have an opportunity to explain their respective sides of the story. The respondent will have to explain why they believe the interim protection order should not be made a final order. This process is a small trial where the court will hear both sides of the story and oral evidence.

The court will ask if there is any other court order against the complainant or the respondent, which has a bearing on the case. If the respondent applied for a protection order against you at another court and the application is still ongoing, this court will order that both applications be dealt with together.

**Note:** the court can subpoena any person as a witness to produce any evidence, which the court considers essential.

**Subpoena**  
*means to force  
a person to  
attend court.*

**Note:** the complainant and the respondent can have a legal representative to help you argue your case.

## What happens if the respondent does not appear on the return court date?

The court will grant the final protection order if;

- The court has proof that the respondent received a copy of the application form and any supporting documents together with the return of court date.
- If, on the face of it, your application shows evidence that the respondent has committed or is committing an act of domestic violence against the complainant.

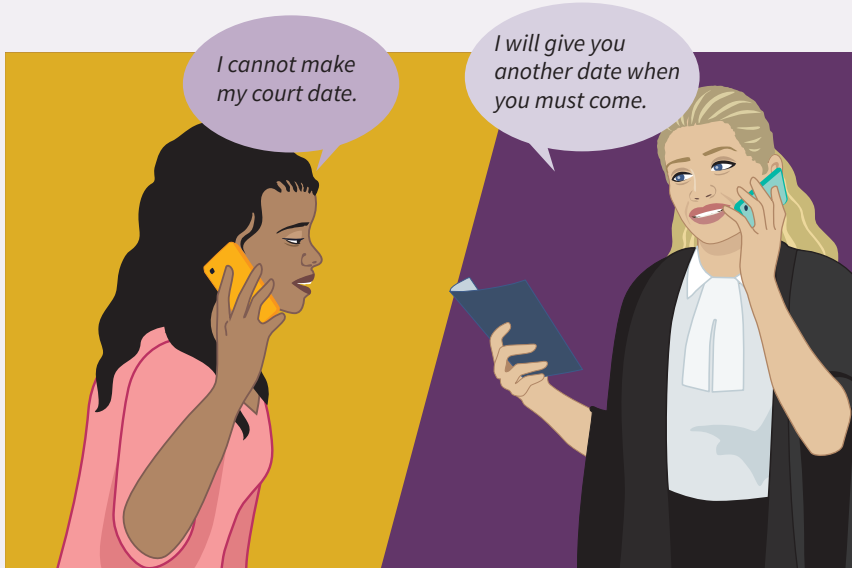
## What happens if the complainant does not appear on the court date and the respondent appears, or both do not appear on the court date?

- The court must extend the interim protection order and the return date.
- The court clerk will notify the respondent and the complainant if they were not at court that the date has been extended.

**Note:** the court will not hear the matter if you are not present.

### CAUTION!

If you cannot attend the court date. Contact the court clerk and let them know of the challenges you are experiencing and request another date to appear. If you do not appear on the extended court date without notifying the court clerk, the court can cancel the interim protection order.



## What happens if the court does not grant the interim protection order?

The court clerk will notify the complainant that their interim protection order was not granted.

The court clerk will continue your application for a protection order. This part of the application is called the ***respondent to show cause***.

The court clerk will provide a return court date, which the complainant and the respondent must appear. The respondent will receive a copy of the application form and any supporting documents. The respondent will also receive notice that they must appear at court on the return date.

On the court date, the respondent will have to explain why a protection order should not be granted.

## What happens if the respondent does not appear on the court date?

If the court is satisfied that the respondent has received the notice to show cause application all the supporting documents and the return date, the court must hear your case.

After the court considers;

- Any evidence previously received in the application and
- Any further affidavits or oral evidence that is produced on that day;

And after considering all of the above, the court finds that there is a strong possibility than not that the abuser has committed or is committing an act of domestic violence; the court **MUST** issue a protection order.



## What happens if the respondent appears on the court dates?

The court will proceed to hear the matter and will consider;

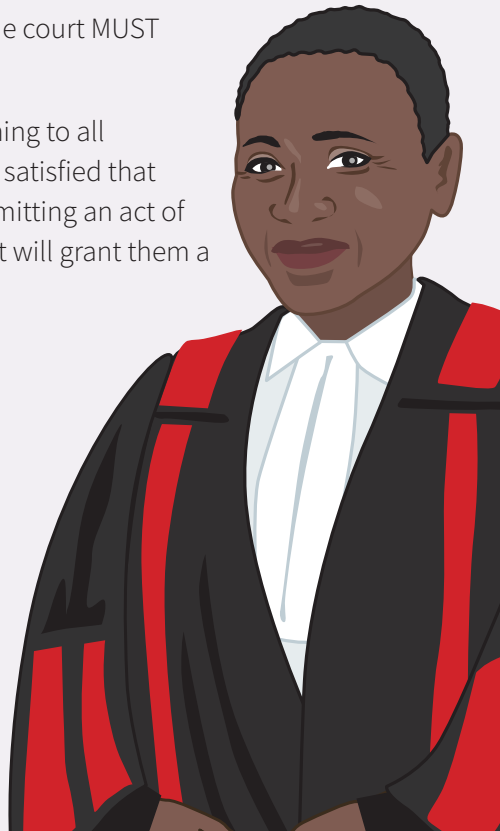
- Any evidence previously received, and
- Further affidavits or oral evidence.

## What happens if the respondent and complainant disagree on what happened?

The complainant or the respondent can ask for the trial to be stopped and rescheduled to a time and date, which the court agrees. This is to provide either party with an opportunity to prepare for the case and produce the necessary evidence.

If you have an interim protection order, the court **MUST** extend it.

After reading all the documents and listening to all statements and evidence and the court is satisfied that the respondent has committed or is committing an act of domestic violence against them, the court will grant them a (final) protection order.



## Step 4: Enforcing The Protection Order

### What can the Protection Order do?

The court can prohibit the respondent from:

- Committing or attempting to commit any acts of domestic violence.
- From entering where the complainant lives if they don't share a residence with the respondent.
- From entering the place where the complainant lives if they share a residence with the respondent or parts of the home.
- From entering the place where the complainant work or study.
- Preventing the abused person from entering or remaining in the shared residence or specified parts of the shared home where the complainant lived.
- Disclosing any electronic communication or making available any communication as specified in the protection order.
- To seize any weapon in the possession or under the respondent's control.

**Note:** Weapon means any weapon or object that can cause harm to your body when used to assault you like a knife, gun, ammunition (bullets), sjambok.

If the respondent has a weapon in their possession, the court can order that SAPS removes the weapon from the respondent. The weapon will be removed regardless of whether the respondent requires the weapon for their work. For example, if the respondent works for SAPS, their weapon must be removed. Your safety is very important.

## When can a weapon be removed?

The court will order that the weapon be removed if:

The respondent threatened to kill the complainant or any other person regardless of whether they used such a weapon to threaten them. For example, the respondent yells that he will shoot the complainant if they don't listen. In this instance, the court will order that the weapon be removed even if the respondent did not point the gun at the complainant.

- It is not in the best interest of the respondent or any other person for the respondent to have a weapon because of their:
  - State of mind or mental condition.
  - Inclination to violence or
  - Use of or dependence on intoxicating liquor or drugs.

The court may impose any additional conditions, which it deems reasonably necessary to protect and provide for the safety, health and wellbeing of the complainant and a related person, which includes:

- SAPS must accompany the respondent to collect the abused person's personal belongings from where the complainant lives.
- To make a recommendation that the complainant approaches the police station to investigate the matter with the view to open a criminal prosecution against the respondent.



- After concluding that the respondent was admitted involuntarily for substance abuse treatment- an order for an enquiry to establish whether they should be admitted for treatment again.
- An order that the respondent pays emergency monetary relief regarding the complainants financial needs. **This means the respondent can be ordered to pay for expenses that the complainant suffered from domestic violence, like loss of income, dental, optical and medical expenses, relocation and accommodation costs, education costs, transport costs and psychological services and counselling costs.**

## Did you know?

Your home, work or study address must not show on the protection order unless it is required for SAPS or the courts to assist you? If the complainant is a child, the child's home, work, or study address must not be disclosed until the Children's Court enquiry into the matter.



## Warrant of arrest

When you receive an interim protection order, you must return to court after the interim protection order was served on the respondent to get your suspended warrant of arrest.

A suspended warrant of arrest will be attached when the final protection order is granted.

The police will use the warrant to arrest the respondent if they disobey the protection order.

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

- The breach is serious,
- Risks to your safety, health or wellbeing or that of a related person.
- The length of time the breach occurred between when it occurred and when you reported the breach.
- If you experienced harm previously by the respondent, SAPS must consider the nature and extent of that harm experienced.

If SAPS arrests the respondent, they will use the warrant of the arrest. You can only use a warrant of arrest once. Thereafter you must request another warrant of arrest from the court.

To request another warrant of arrest from the court. You will have to complete an affidavit which states that the warrant of arrest is required for your protection and that the existing warrant was used and cancelled, lost or destroyed.

The warrant of arrest does not expire and will remain in force unless it is used or the protection order is set aside.

## What happens if SAPS do not arrest the abuser at 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. However, the police officer must immediately do the following:

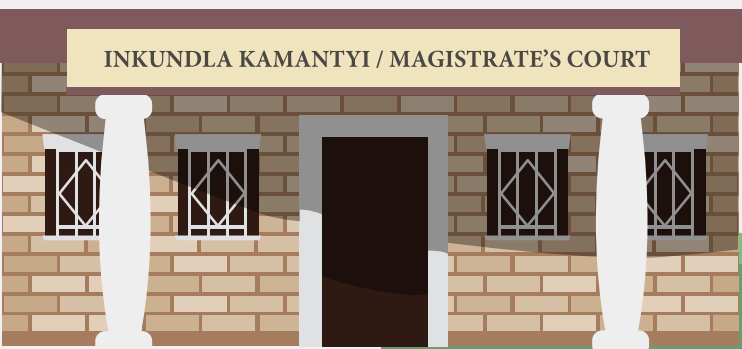
- Give a handwritten notice to the respondent informing them that they must appear in court on a specified date for disobeying the protection order.

## How to cancel or change the protection order?

**Reminder:** the protection order does not expire and will remain valid and in force unless it is set aside by the court. The protection order is valid throughout South Africa regardless of which court issued the order and is enforceable.

If you apply for a protection order while you have an existing protection order, the court will record your existing orders, and the court will try to assist you and hear why you need another order. If it is found that you need to change something urgently in your existing protection order to protect you from domestic violence, the court will make such an order. However, the court will not make an order, which contradicts your previous order. The order, which the court makes, will be for a limited time to allow you the opportunity to apply for a variation order.

**Variation order** means to change something in the protection order.



## Who can apply for variation order or setting-aside a court order?

The complainant or respondent can apply for the variation or set aside the protection order.

## What happens when we apply for a protection order?

If the respondent applies to have the protection order set aside or changed, the court will notify the complainant.

The complainant will receive the respondent's reasons for changing or setting aside the protection order, and they will have the right to oppose their application.

If either the complainant or respondent applies to have the protection order set aside or changed, the court must be satisfied with the following before granting the order;

- Circumstances have changed materially since the granting of the original protection order.
- Good cause has been shown for changing or setting- aside of the protection order.
- The parties were served the application for variation or setting aside and all relevant documents correctly.

**NB:** The court will only grant the order if satisfied that the complainant made the application freely and voluntarily.

## Electronic repository of protection orders

The electronic repository for protection orders is a centralized system, which stores all documents relating to protection orders. Every application, document, evidence and anything relating to the protection order must be captured in the electronic repository of protection orders. This will assist the court in tracking all existing orders.

## What happens if the respondent disobeys the protection order?

It is a criminal offence to disobey the protection order.

The abuser will have to appear before a court, and the court can send the respondent to prison or fine the abuser or both.

## Costs

The court can make an order for costs against any party if it is satisfied that such party acted:

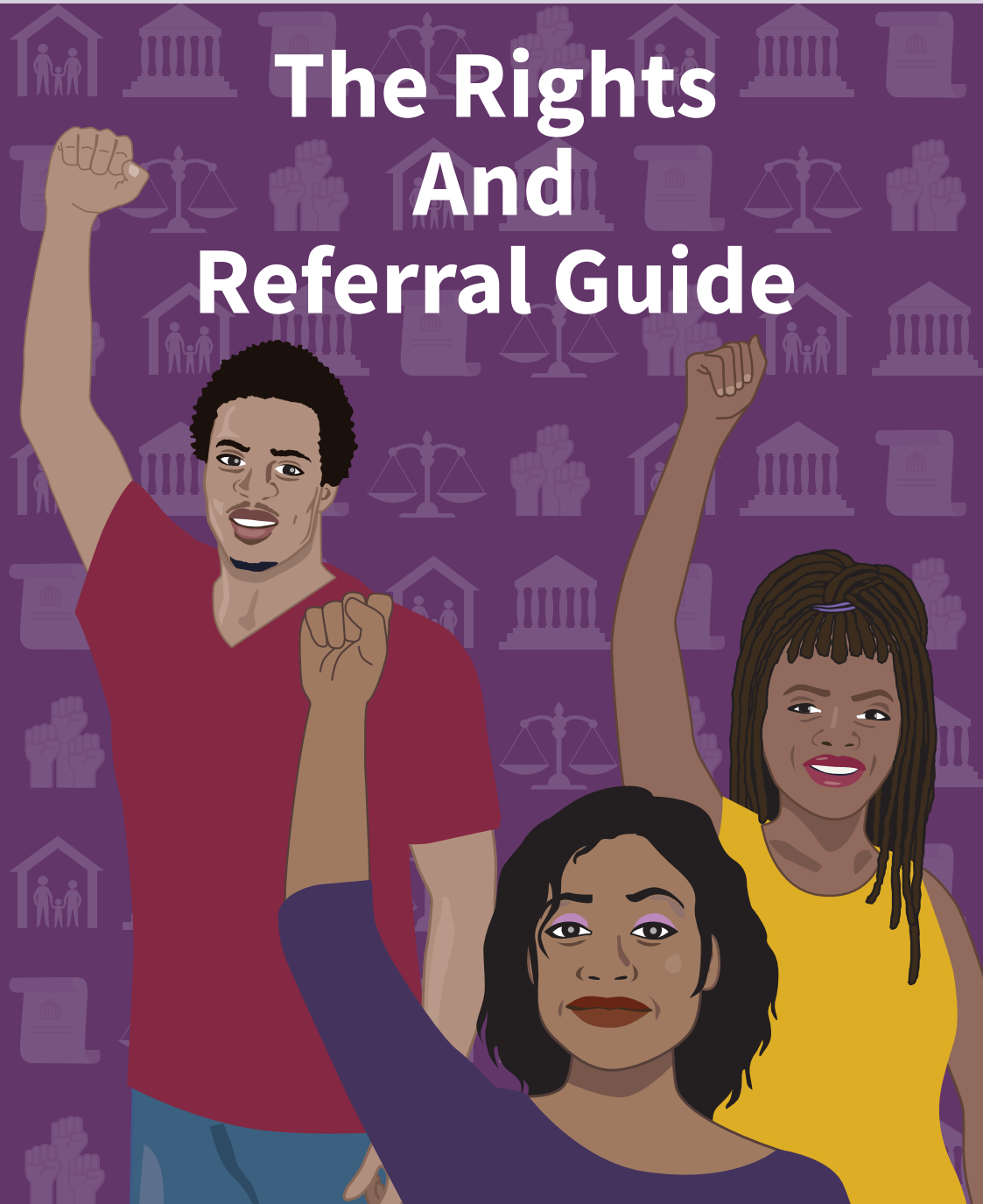
- frivolously,
- vexatious,
- or unreasonably.

The court can also order any person to pay for the service of documents, obtain information from the electronic service provider, or remove or disable access to electronic communication.





# The Rights And Referral Guide



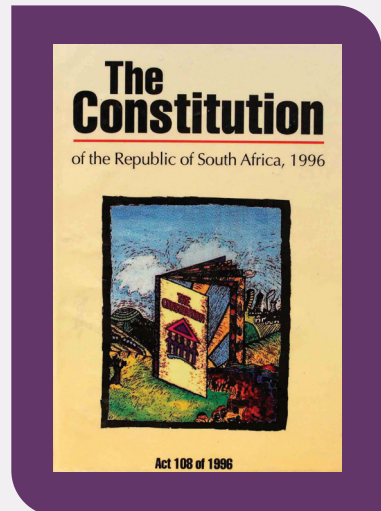
A rights guide for people who have experienced domestic violence and/or supporters of anyone who has been abused when dealing with any practitioner while accessing justice, care and/or support.

# 1. Introduction: Everyone Has Rights

In South Africa every person has human rights. Human rights are rights and freedoms that people have because they exist as human beings- these rights are what every person are born with and no government, organisation or person can take them away from you.

In South Africa, we have a constitution. This is a law that is documented with all the rights that all people in South Africa have. The purpose of the constitution is to express the values that the people have as a national community. It recognises and protects the dignity of all human beings inside the country. It also places responsibilities on all people, in using their human rights, to respect the rights of others. The constitution helps all people in South Africa know how individual human beings can live in society and with each other.

The Constitution also gives meaning to government as an institution and details the relationship that individual human beings have with the government; and what powers



the government has and how it can use its powers. The Constitution details the obligations that the government has towards the people that live inside South Africa. It tells the government to do some things and prevents them from doing certain things.

No government, group or individual person has the right to do anything that violates another's rights. It is important that every person knows and understands their rights and responsibilities as enshrined in the Constitution.

The Constitution has 14 Chapters. The chapters detail individual rights, and government duties and limitations. Chapter 1 of the Constitution details the **founding values** of the Constitution; the Constitution as the highest law, citizens are equal, the anthem, the flag and 11 official languages.

These values include:

- human dignity, the achievement of equality, and the promotion of human rights and freedoms
- non-racialism and non-sexism
- the rule of law and the Constitution as the highest law
- a vote for every adult citizen, one national voters' roll for all citizens, regular elections and a multi-party system of democratic government

Chapter 2 of the Constitution is the Bill of Rights. The Bill of Rights protects the rights of all people in South Africa, not only citizens. The government must respect, promote and fulfil the rights in the Bill. These rights can be limited in certain circumstances. For example, freedom is a right we all have, but the state has the right to send people to prison if they have been convicted of a crime by a court.

The Bill of Rights says many things, including:

- everyone is equal before the law
- affirmative action may be taken to achieve greater equality
- no unfair discrimination is allowed
- everyone has the right to freedom
- everyone has freedom of religion, belief, opinion and expression
- everyone has political rights.

The Bill of Rights also guarantees socio-economic rights which include the right to housing, health care, food, water, social security and education. This is a special category of rights because not everybody will be able to enjoy them immediately. Instead, the state has a responsibility to secure these rights for people within what it can afford over a period of time. The Human Rights Commission monitors the state's progress on socio-economic rights.

### **Facts to remember:**

- ✓ Human rights are rights all people have simply because we exist as human beings
- ✓ The Constitution is a law that ensures that no individual or government violates or disrespects those rights
- ✓ Human being means every person regardless of gender and/or race. There are individuals that are marginalised in South Africa- women, children, persons living with disabilities, LGBTQIA community and there is a need to emphasise that these human rights are for everyone and violation of these rights is against the law.

## 2. Claiming Your Rights

It is important to know and always remember that the law is for everyone. Anyone who experiences abuse and violence is a victim of crime, it does not matter whether the crime committed against you was perpetrated by a person known to you or not. It does not matter if you are or were in an intimate-partner or domestic relationship or not.

The Bill of Rights uses words like “everyone” and “any person” and this refers to all victims of crime regardless of relationship between a victim and a perpetrator. The Constitution protects everybody because it seeks to uphold the values of human dignity, equality, and freedom. It is therefore important to understand that as a victim of domestic and/or intimate partner violence, you have the same right to access help from the police, hospitals and/or clinics and courts when reported the crime you experienced.

This section explains the rights that victims of domestic violence have and how one can claim those rights from the government, in particular the police, courts, social development and health. It also details what to do when the court and/or police do not act to protect one's rights as a victim.



## The Law Provides Protection For Domestic Violence Victims

The Domestic Violence Act 116 of 1998 (DVA) as amended by the Domestic Violence Amendment Act 14 of 2021 ( DV Amendment Act) is the law that deals with domestic violence in South Africa. The South African Government recognises that domestic violence is a serious social problem, that takes on many forms and that acts of domestic violence may be committed in a wide range of domestic relationships.

The aim and purpose of the Domestic Violence Act 116 of 1998 is to create a system in law that provides maximum protection to victims of domestic and intimate partner violence. The protection is provided through protection orders that is obtained at magistrates' courts where the magistrate will detail in the protection order rules that the perpetrator must follow and if they break any of the rules, the police must act. The Domestic Violence Amendment Act also provides added measures for other government departments to act to ensure the aims and purpose of providing protection to victims of domestic and intimate partner violence is effected.

When you are victim of domestic violence, you need care, protection and support. This is the government's responsibility and it is your right to claim it. To ensure that you receive maximum care, protection and support as it is detailed in the Domestic Violence Amendment Act, the government developed a Service Charter for Victims of Crime (Victims' Charter). The Victims' Charter seeks to cultivate a human rights culture by ensuring that victims' needs, either material or emotional, are met.

The Constitution and the Domestic Violence Amendment Act will be upheld when you seek help from

- Police
- Magistrates
- Clerks of the court
- Prosecutors
- Doctors
- Nurses
- Social Workers
- And other practitioners that you might be referred to.





## Your Rights As A Victim When Reporting Domestic Violence

If you or anyone you know has been abused or is being abused,

- You or they have the right to apply for a protection order at the nearest Magistrate's Court;
- You have a right to lay a criminal charge at the police station and apply for a protection order;
- You have a right to medical care from doctors and nurses;
- You have a right to psychosocial support from social workers and may be referred to a shelter for your own safety.



In accordance with the Victims' Charter Rights you have a:

### **1. Right to be treated with fairness, dignity and respect-**

You can expect all practitioners to treat you fairly, with respect for your own dignity and privacy, and in a sensitive manner.

When you seek help and report domestic violence, practitioners must:

- Respond as quickly as possible to the complaint ;
- Interview you in private to compile a statement and open the case (this interview can take place in a dedicated Victim Friendly Room or in another private room);
- Police must investigate the crime- they are not allowed to turn you away because it is a domestic violence issue, if you are reporting a crime, you are entitled to protection;
- The police must refer you to other service providers such as health for medical evidence or care, social development for counselling, and to the nearest court to apply for a protection order.

### **2. Right to protection-**

You have the right to safety if you believe that your life is in danger.

- You have a right to be placed at a place of safety if it is deemed necessary. The practitioner helping you, must refer you to a shelter for your safety and protection, this includes the police.
- You have the right to apply for a protection order to ensure your immediate and future safety, and the police, social worker, doctor and/or nurse must link you to the nearest magistrate's court.

### 3. Right to assistance-

You have the right to receive help, and to have the practitioner explain the process to you. They must explain procedures and inform you when the case has been opened.

- You can request that necessary steps be taken to prevent further harm and have the practitioner address your safety as a priority. This includes referring you to a shelter, health facility, counselling and/or court for a protection order.

### 4. Right to receive information from the police and/or court officials when reporting domestic violence-

You have a right to receive details of your case and/or complaint and information that will help you understand the process.

- You may discuss the case with an attorney of your choice, however, when you open a case, the matter is a crime and the National Prosecuting Authority will handle the matter in court
- When reporting the case a police official must explain the nature and purpose of your statement
- The police official must provide you with the case number and the name of the investigation officer. The investigation officer must keep you informed about:
  - The arrest of the suspect(s)
  - The court case number
  - The progress of the investigation of the case
  - The prosecution of the suspect(s)
- When the respondent violated the protection order and the suspended warrant of arrest has been activated, the prosecutor and/or magistrate cannot refuse to prosecute your case.

## 5. Right to offer information during the investigation of the case-

You must provide the necessary information to the police, clerk, magistrate and/or prosecutor in order for a statement to be taken when you report the domestic violence.

- The police must take steps to ensure that any evidence you provide is correctly gathered and protected and that they take necessary steps to facilitate a medical examination if needed;
- The police official and/or clerk of the court must ask the you to read the statement or affidavit, confirm its contents and to sign it. If you cannot read, the practitioner or another person appointed by yourself, can read the statement to you before it is signed. The statement must be done in a language you understand. If that is not possible an interpreter must be made available to read the statement to you;
- If you realise the statement is wrong or incomplete, you are allowed to add to, or amend the initial statement or to make a further statement.

Domestic violence can be very dangerous for anyone, especially when it involves physical violence. A person who finds themselves in critical danger where someone is going to hurt them or has hurt them using violence must reach out to the police for protection.

It is most likely that as a victim of domestic violence, the South African Police Service (SAPS) will be the first responder you seek help from. All victims of crime who report to SAPS are entitled to a victim-friendly service, that ensures no harm is done when interacting with any member of the police and that the police acts to prevent any further harm.

It is your right to report your domestic violence issue and the police cannot refuse to open a case and/or act to protect you from harm!

## Facts to remember:

- ✓ Anyone who experiences domestic violence is a victim of crime and is entitled to open a criminal case with the South African Police Service.
- ✓ All practitioners must treat you with respect, and must serve you according to your needs.



# 3. What To Do When Practitioners Violate Your Rights?

It is your constitutional right to complain against any practitioner and government institution that does not act to protect your rights as a victim of domestic violence.

## South African Police Service (SAPS)

If you report domestic violence at any SAPS station and a police officer does not process your complaint, refuses to assist or refer you to further services, you can report the matter to the station commander at the relevant police station. The complaint will be noted in a complaints register, stating the name of the member concerned, the date on which the complaint is lodged, and the details of the complaint. The Station Commander will take disciplinary steps against the member involved.

If your complaint is during office hours, the Station Commander will handle the matter. If you are at the station after office hours and you want to lay a complaint, you can ask for the Station Relief Commander.



The Western Cape Provincial South African Police Service has a Provincial Complaints Nodal Point where victims can lay complaints.

When you do not get any assistance from your local SAPS and the Station Commander is not responsive, you can contact:

**wcml.complaintsnodalpoint@saps.gov.za**  
or call **021 409 6529/33** and/or **082 469 7721**.

**When all attempts to get assistance from a station or provinces have failed, you can contact:**

**The National Service Complaints Call Centre on  
0800 333 177  
and follow the voice prompts and selections of your choice.**

**You may also email**

**complaintsnodalpoint@saps.gov.za or  
service@saps.gov.za**

## Court Officials

### Magistrates

**A complaint against a magistrate** is possible but it is complicated as they are independent. Although magistrates are practitioners, they are independent and are only subject to the Constitution and the law. If you have experienced unfairness and believe that the **magistrate did not follow process**, you have a right to take **the matter on Review or Appeal**. However this is an expensive exercise and it is advisable to get the assistance of an attorney. If you do not have the funds, you can contact Legal Aid.

Magistrates' independence should not stop you from complaining when there is injustice. You are allowed to approach the Chief Magistrate. You are also allowed to ask the magistrate to recuse themselves when there is evidence of bias and/or you believe that you will not have a fair hearing.



### Prosecutors/Clerks/Court Managers

- Complaints on the **conduct of the Prosecutors** should be **lodged with the Chief Prosecutor** for the area of the respective court.
- Complaints on the **conduct of the Clerks/ Administration** should be **lodged with the Court Manager** at the respective court.
- Complaints on the **conduct of the Court Manager** should be **lodged with the Area Court Manager or Director, Court Operations**.

You can obtain the details of the relevant officials at the courts and also on the Department of Justice and Constitutional Development's website, [www.dojcd.gov.za](http://www.dojcd.gov.za).





## Department Of Social Development

The Department of Social Development is responsible for social support services in all communities in South Africa for victims of domestic violence and their children. The Department of Social Development contracts service providers such as NGOs like MOSAIC and/or GBV social workers. If you are at a local DSD office and the GBV social worker or any other personnel refuse to give you assistance or mistreat you in any way, you have the right to complain.

Each local DSD office has a manager, and if you are not happy with the service, they will log your complaint which is tracked into their customer care service portal.

You can also call **0800 220 250** (Toll-free) or **012 312 7727** and/or email **[SD.CustomerCare@westerncape.gov.za](mailto:SD.CustomerCare@westerncape.gov.za)** or **[customercare@dsd.gov.za](mailto:customercare@dsd.gov.za)**



## References/Sources

This booklet has adapted the following acts and policies through simplified language for any first responder and/or community member to understand and use:

1. Constitution of South Africa 108 of 1996
2. Domestic Violence Act 116 of 1998
3. Domestic Violence Amendment Act 14 of 2021
4. Service Charter for Victims of Crime in South Africa, 2004



MOSAIC provides direct services and also works collaboratively with various stakeholders to advance safety in relationships, homes and communities.

If you are experiencing abuse or know someone who is, please contact us. If you are a first responder working to prevent and respond to intimate-partner violence (IPV) or domestic violence (DV) and you are in need of training or support, please contact us.

Mosaic – Training, Service & Healing Centre

66 Ottery Rd, Wynberg

Cape Town, 7800

+27 21 761 7585

[www.mosaic.org.za](http://www.mosaic.org.za)