

#### How can a protection order be enforced?

If the court grants an interim or final protection order, a warrant of arrest will also be issued and provided to the complainant. If the respondent breaches the terms and conditions set out in the protection order, the complainant must report the breach to the police and the respondent can be arrested in terms of the warrant of arrest.

#### How can a protection order be cancelled or changed?

The complainant or respondent can apply to court to cancel or change a protection order, upon providing a good reason.

Written notice of such an application must be given to the court and the other person.

#### Glossary of terms:

**COMPLAINANT:** means a person towards or in connection with whom:  
(a) domestic violence is committed, being committed or alleged to have been committed; or  
(b) a domestic violence offence is committed or is alleged to have been committed, irrespective of whether or not that person has actually laid a complaint or gives evidence in any relevant criminal proceedings.

**PROTECTION ORDER:** this is an order made by a court that prevents the respondent from causing domestic violence to the complainant and can be interim or final. The protection order may contain certain terms and conditions that a respondent must comply with, for example, the protection order can state that the respondent is not allowed to make any contact with the complainant or to go near the complainant. The interim order is temporary and the final order is final and is meant to prevent continuing acts of domestic violence.

**RESPONDENT:** means a person against whom a protection order is sought or has been made.

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## Domestic Violence



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### What is domestic violence?

Domestic violence is violence that takes place within a family or another close relationship. Domestic violence is sometimes called "battering". When it takes place between husband and wife, it is sometimes called "wife abuse" or "spouse abuse". When children are the victims, it is often referred to as "child abuse".

### What will be considered to be domestic violence?

The following conduct is domestic violence in terms of the Act if it occurs in a domestic relationship.

- (1) Physical abuse, including:
  - assault or any use of physical force against the complainant, such as beating or kicking;
  - confining or detaining by force, such as locking the complainant in a room, or refusing to let the complainant go to work;
  - depriving the complainant of access to food, water, clothing, shelter or rest, such as locking the complainant out of the home.
- (2) Sexual abuse, including:
  - forcing someone to engage in any sexual contact;
  - engaging in sexual conduct that abuses, humiliates or degrades the complainant. An example of such conduct is a man who touches his wife's breasts openly at family gatherings whilst making insulting comments about her breast size;
  - making someone look at sexual material, such as pornographic magazines or websites, that abuses, humiliates, or degrades them;
  - engaging in abusive, humiliating or degrading sexual contact or conduct with another person with whom the complainant has emotional ties, such as a family member or close friend. For example, a man is committing domestic violence against his girlfriend if he forces her daughter by another man to look at a pornographic movie.
- (3) Economic abuse, including:
  - unreasonably depriving the complainant of goods or money which she needs to live, reasonably expects to use or has a legal right to use. Examples include depriving a person of food, of the use of the family car to get to work or of access to her own income;
  - unreasonably selling, destroying or damaging property in which the complainant has an interest or a reasonable expectation of use. An example is destroying the family radio with a hammer to stop the complainant from listening to the news;
  - hiding property in which the complainant has an interest or a reasonable expectation of use, or otherwise preventing the complainant from using the property. An example is locking up the complainant's work uniform as a way of preventing her from working.
- (4) Intimidation. This is intentionally making the complainant afraid for herself, or afraid for another family member or dependent, by:
  - threatening to physically abuse the complainant;
  - physically abusing, or threatening to abuse, a family member or dependent of the complainant;
  - exhibiting a weapon, or any other behaviour that seems threatening. An example is regularly placing a knife on the table whilst staring at the complainant in a hostile way.
- (5) Harassment. This is repeatedly following or communicating with the complainant, a family member or dependent of the complainant in an unwelcome way
- (6) Trespass, which is entering the home or property of the complainant, without the complainant's consent, where the complainant and defendant do not share the same home.

- (7) Emotional, verbal or psychological abuse. This requires a pattern of seriously "degrading" or "humiliating" behaviour towards the complainant, a family member or a dependent of the complainant, such as:
- repeated insults or causing emotional pain. An example is a husband requiring his wife to accept his girlfriend sleeping in the married couple's bed;
  - repeated and serious exhibition of obsessively jealous or possessive behaviour towards the complainant, the complainant's dependents or family. An example is a man who insists that the teenage sister-in-law who lives with him and his wife may not visit any friends, or be visited by them.

- (8) Threats or attempts to carry out any of these acts also constitute domestic violence.

### What is a domestic relationship?

The complainant and respondent will be considered to be in a domestic relationship, in terms of the Combating of Domestic Violence Act, if they are:

- married to each other according to any law, custom or religion;
- cohabitation (living together in a long-term relationship without being married);
- parents of a child;
- family members related by blood, marriage or adoption; for example, parent and child;
- dating each other or engaged to each other; or;
- staying together in the same home.

The law does **NOT** cover same-sex relationships of a romantic nature. This means that people who are in gay or lesbian relationships which involve violence cannot use the Combating of Domestic Violence Act.

### What remedies are available to a complainant?

Anyone who has experienced violence or threats of violence in a domestic relationship can do the following:

- one can make an application for a protection order.
- if the abuse amounts to a crime (such as hitting which is assault, or stabbing which may be attempted murder), one can lay a charge with the police OR ask the police to give the abuser a formal warning.
- one can do both of these things at the same time.

### Who can apply for a protection order?

- Anyone who has been abused or threatened with abuse in a domestic relationship.
- A minor may bring an application without the assistance of an adult in cases where the violence is serious in nature.
- A family member, police officer, social worker, health care provider, teacher, traditional leader, religious leader, employer, counsellor, or any other person who has an interest in the well-being of the person who has suffered the violence.

The person who has actually suffered the violence must give written consent for the application to be made by someone else, unless this person is:

- a minor (under the age of 21);
- a mentally incapacitated person;
- an unconscious person;
- a person who is regularly under the influence of alcohol or drugs,
- or; a person who is at risk of such serious physical harm that the court may approve an application without that person's consent.

### How can a complainant apply for a protection order?

One can make the application at the magistrate's court nearest to:

- the place where the complainant lives or works,
- the place where the respondent lives or works,
- the place where the abuse took place.

The complainant will have to complete the necessary application forms, which can be obtained from the clerk of the court.

### What happens after an application for a protection order has been submitted?

The clerk of the court will give the application to the magistrate. The magistrate will consider the application as soon as possible. The magistrate may make a decision after looking at the information in the application form and the accompanying documents.

OR

The magistrate may ask for more information before making a decision, perhaps by asking the applicant or someone else to come to the court to answer some questions in person. The magistrate has the power to do any of the following things:

- make an interim protection order as requested;
- make an interim protection order that includes only part of what was requested;
- dismiss the application for a protection order because it appears false or frivolous; or
- make no decision until after there has been an enquiry where the magistrate can hear from both the complainant and the respondent.

### What must the respondent do upon receiving an interim protection order?

The next step depends on what the respondent does. The respondent must decide if he is going to oppose the order. He must make this decision before the date which is stated in the interim order. This date is called the return date. The return date will normally be 30 days from the date the interim protection order was issued. But in order to be fair to the respondent, the return date must be at least 10 days after the respondent received the interim protection order.

The respondent has two options:

- **If the respondent opposes the order:** The respondent must send the clerk of the court a simple notice saying that he wants to oppose the order, before the return date. Then there will be a court proceeding called an enquiry, where both parties will have a chance to tell their sides of the story.
- **If the respondent does not oppose the order:** The respondent does NOT give the clerk of the court a notice saying that he or she opposes the interim protection order, then the order will automatically become final. The magistrate must make sure that the respondent really received notice of the interim protection order and chose not to oppose it. Once this is proved, the magistrate must make the interim protection order into a final protection order.

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