

A new chapter in the fight against gender-based violence?

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Domestic Violence Amendment Act 14 of 2021 is Now Operational

Following a relatively expedited legislative process, the Domestic Violence Amendment Act 14 of 2021 (DVAA) came into operation on 14 April 2023. The DVAA – which amends the Domestic Violence Act 116 of 1998 (DVA) – is one Act in a set of three, which are colloquially referred to as the *"Gender-Based Violence Amendment Acts"* (GBV Amendment Acts).

In addition to the DVAA, the other Acts in that set are the: Criminal Law (Sexual Offences and Related Matters) Amendment Act 13 of 2021; and Criminal and Related Matters Amendment Act 12 of 2021, which previously came into operation on 31 July 2022 and 5 August 2022 respectively.

What Changes do the Amendments Bring?

The GBV Amendment Acts are generally intended to strengthen the fight against gender-based violence and offer greater support and protection to survivors.

The DVAA in particular was introduced to achieve two goals, being: to enhance the protections available to survivors of domestic violence; and to address practical challenges, gaps and anomalies which have manifested since the DVA came into operation.

The first notable set of changes introduced by the DVAA is the addition of definitions for several types of domestic abuse, as well as the revision of some pre-existing definitions. Some of the new additions include definitions for:

"coercive behaviour", "controlling behaviour", "elder abuse", "expose a child to domestic violence", "sexual harassment" and "spiritual abuse", amongst others. Revised definitions include changes to the definitions of "harassment", "physical abuse", "sexual abuse", "emotional, verbal or psychological abuse", and "intimidation", amongst others.

For details regarding the new and revised definitions in the DVAA see: *Domestic Violence: New definitions you should know*.

The second set of notable changes relate to technical and procedural issues.

They include, amongst other things, the introduction of:

- **Electronic Submissions** – Applications for protection orders may now be submitted "electronically" (i.e. by email) or through a dedicated "online portal";
- **Domestic Violence Safety Monitoring Notice** ("Notice") – A complainant who shares a residence with a respondent, and reasonably suspects that the respondent poses a threat to their personal safety, may apply for a Notice (in addition to a protection order). The Notice may direct the South African Police Service (SAPS) to either contact or visit a complainant at their residence at regular intervals (for a period determined by the court), to ensure the continued safety of a complainant. If the SAPS is prevented from contacting or

visiting the complainant, they may use reasonable force (e.g. breaking a door or window) to enter the residence and communicate privately with the complainant;

- **Obligations for Electronic Communications Service Providers** – Where it is alleged that an electronic communication (e.g. on social media) was used to commit an act of domestic violence, the court may direct an electronic communications service provider to provide certain information to the courts;
- **Mandatory Reporting Obligations for Functionaries** – Certain functionaries (i.e. medical practitioners, health care personnel, social workers, educators and care-givers) who reasonably believe or suspect that an act of domestic violence has been committed against a child, a disabled person, or an older person must report such belief or suspicion to a social worker or the SAPS;
- **Mandatory Reporting Obligations for Adults** – Any adult who knows, or reasonably believes or suspects that an act of domestic violence has been committed against a child, a disabled person, or an older person must report such knowledge, belief or suspicion to a social worker or the SAPS;
- **Mandatory Prosecutions** – No prosecutor may refuse to prosecute a person who has violated the terms of a protection order; and
- **Integrated Electronic Repository** – An online platform which aims to facilitate accessibility of orders by functionaries in the criminal justice system.

It is worth noting that the Proclamation Notice specifically states that section 6A, dealing with the abovementioned integrated electronic repository, is not yet operational.

In addition to the above, directives were also issued on 14 April 2023 in terms of which, amongst other things: certain court personnel must be available to accept applications for protection orders after-hours; and all court personnel must attend annual training on the DVA and its regulations.

Will The Amendments Advance the Fight Against GBV?

In a report titled *"Call to Action": United to End GBV* the Commission for Gender Equality correctly states that while the structural drivers of GBV and domestic violence are societal and require a multi-sectoral approach, the SAPS has an especially crucial role to play as they are "custodians of law and order", and are usually the first point of contact for victims of GBV within the criminal justice system. The report further states that the SAPS face various challenges (e.g. insufficient resources, a lack of training, etc.) which prevent them from dealing with GBV and domestic violence cases efficiently.

It is therefore important to note that, while the changes brought about by the DVAA are welcome tools in the fight against GBV, they will only be effective if they are meaningfully implemented and enforced by the SAPS and other stakeholders.



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