

NAVIGATING DOMESTIC AND FAMILY VIOLENCE LAW



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ACKNOWLEDGEMENT OF COUNTRY

I would like to acknowledge the traditional custodians of the land that we are meeting on today. I would also like to pay my respects to Elders past, present and emerging, and extend that respect to other Aboriginal people here today.



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WHAT IS DOMESTIC AND FAMILY VIOLENCE (DFV)?

Domestic and family violence occurs when one person in an intimate personal, family or informal care relationship uses violence or abuse to maintain power and control over the other person.

Broadly, under Queensland law, it includes behaviour that is physically, sexually, emotionally, psychologically or economically abusive, threatening, coercive or aimed at controlling or dominating another person through fear.

- Domestic and Family Violence Protection Act 2012

WHAT IS DOMESTIC AND FAMILY VIOLENCE (DFV)?

Different types of Domestic and Family Violence:

- ◉ Physical
- ◉ Sexual
- ◉ Verbal
- ◉ Emotional/psychological
- ◉ Financial

WHAT IS DOMESTIC AND FAMILY VIOLENCE (DFV)?

Associated Domestic and Family Violence

Behaviour by a respondent towards:

- ◉ A child of the aggrieved; or
- ◉ A relative of the aggrieved; or
- ◉ An associate of the aggrieved such as a partner, a person who lives or works with the aggrieved, or a person who assists the aggrieved, e.g. a neighbour or friend

Exposed Domestic and Family Violence

Exposing a child to domestic violence means allowing a child to see or hear domestic violence, such as seeing or hearing an assault, overhearing threats or taunts or observing injuries.

WHO CAN APPLY FOR A PROTECTION ORDER?

A person who is in a 'relevant' relationship:

- ⦿ an intimate personal relationship
- ⦿ a family relationship
- ⦿ an informal care relationship

WHO CAN APPLY FOR A PROTECTION ORDER?

An **intimate personal relationship** is a :

- ◉ **spousal relationship** (and this includes a former spouse or parent or former parent of a child of the person);
- ◉ **an engagement relationship** (where two persons were engaged to be married); or
- ◉ **a couple relationship** (between two persons if the persons have or had a relationship as a couple)

WHO CAN APPLY FOR A PROTECTION ORDER?

A **family relationship** exists between:

Two persons if one of them is or was a relative of the other, and this includes a spouse, child stepchild, parent, step-parent, sibling, grandparent, uncle, niece, cousin, half-brother or parent-in-law.

An **informal care relationship** exists between:

two persons if one of them is or was dependent on the other for assistance in a day to day activity, such as shopping for a person's groceries, preparing meals or taking that person to medical appointments.

OTHER PERSONS WHO CAN BE INCLUDED ON THE ORDER

Applicant's children or;

Members of the applicants family, friends, a new partner and workmates.

- ◉ When DFV is committed against these persons they are subjected to 'associated DFV' and are included on the protection order as "named persons".
- ◉ A child will only be included on the order if the court considers it necessary or desirable to protect that child from DFV.
- ◉ A child is subjected to DFV if they see or hear DFV or they are otherwise subjected to DFV, such as seeing damaged property in their home

MAKING AN APPLICATION FOR A PROTECTION ORDER

Police Protection Notice

- ◉ On the spot issue of protection notice if police believe that DFV has been committed
- ◉ Take affect immediately , carries the same protection as a court order until heard in court
- ◉ The protection notice will stipulate a court date when the respondent must appear and will become the application to the court.

Private Application

Can be made by:

- ◉ The person who has been the victim of DFV
- ◉ An 'authorised person', which can be a friend, relative or community/welfare worker
- ◉ A lawyer can be appointed, on behalf of the aggrieved

MAKING AN APPLICATION FOR A PROTECTION ORDER

Submitting a private application

Aggrieved or an authorised person must complete an application form, a '**DV1- Application for a Protection Order**', available online.

The application must include:

- ◉ When it occurred
- ◉ Where it occurred
- ◉ What occurred
- ◉ How it occurred
- ◉ Any injuries that were suffered or any damage that was caused to property
- ◉ How the violence affected the person, e.g. Did it cause feelings of fear, terror or anxiety?

MAKING AN APPLICATION FOR A PROTECTION ORDER

Other things to note:

- ◉ Application must be signed in the presence of a solicitor or Justice of the Peace and lodged at a magistrates court
- ◉ At the time of lodgement a court date will be allocated
- ◉ If protection order is urgent, it will be listed with priority

THE COURT PROCESS

The first court appearance

The magistrate will consider the application, and if the respondent has been served and appears, he/she will have the following options:

- (i) Consent to an order being made
- (ii) Seen an adjournment to obtain legal advice
- (iii) Disagree with the application, which will result in the court allocating a hearing date.

THE COURT PROCESS

The trial

- ◉ When the matter is allocated for trial, the magistrate will issue directions in relation to filing and serving affidavits and issuing subpoenas.
- ◉ The magistrate will impose strict time frames when issuing directions, and if those time frames are not adhered to the application may be dismissed or the magistrate may not allow the aggrieved's evidence.
- ◉ If the aggrieved wishes to rely on evidence from third parties, to support the application, those persons will also be required to file Affidavits. Similarly, if the respondent wishes to rely on third parties, he/she is required to file and serve an affidavit sworn by that person(s).

THE COURT PROCESS

The trial

- ◉ The aggrieved will give evidence first and then, if he/she has any witnesses, those persons may also be called to give evidence.
- ◉ If the aggrieved feels that facing the respondent may cause emotional distress it may be possible for the evidence to be provided from behind a screen.
- ◉ The respondent will have to attend court in person and answer any questions posed by the magistrate and by the other party. This is called 'cross examination'.
- ◉ When the respondent gives evidence, the aggrieved may cross examine the respondent.

THE COURT PROCESS

The trial

A protection order will only be made if the magistrate makes a finding that:

- ⦿ a relevant relationship exists between the aggrieved and the respondent; and
- ⦿ the respondent has committed DFV against the aggrieved; and
- ⦿ it is necessary or desirable to make a protection order to protect the aggrieved from DFV.

WHAT ORDERS CAN BE MADE BY THE COURT?

Temporary Protection Order

- ◉ Provides the aggrieved with protection from DFV until the application can be heard in court
- ◉ Such an order will be made if a relevant relationship exists and an act of DFV has occurred

Final Protection Order

- ◉ is made after a trial; or
- ◉ if the respondent agrees to an order being made; or
- ◉ if the respondent fails to appear or engage in the court process.

WHAT CONDITIONS CAN BE INCLUDED IN AN ORDER?

The mandatory provision of an order includes:

- ◉ The respondent must be of good behaviour towards the aggrieved and not commit DFV; and
- ◉ The respondent must be of good behaviour towards any named person in the order and not commit an act of associated DFV against the person.
- ◉ Additional conditions can be included in the order, and when deciding whether those conditions should be included the court must consider whether imposing any other condition is necessary or desirable to protect the aggrieved and others named in the order from further DFV.

VARIATION DFV ORDERS

An application for an variation of a DFV order can be made by:

- ◉ the aggrieved
- ◉ the respondent
- ◉ the police
- ◉ an authorised person for the aggrieved

And must be in approved form, set out the grounds on which the variation is sought, state the nature of the variation and be filed in court.

VARIATION DFV ORDERS

The variation can relate to:

- ◉ a condition of the order
- ◉ The duration of the order
- ◉ the persons named in the order

The application for the variation of a protection order, once filed in the court, will be served on the respondent and will be heard by the court

If the respondent fails to appear the court may hear and determine the application, adjourn the application or dismiss the application without deciding it if the application has not appeared.

DURATION OF DFV ORDERS

The court may order that a protection order continues in force-

- ◉ for any period it is considered necessary or desirable to protect the aggrieved from DFV;

or

- ◉ For a period of less than 5 years, but only if the court is certain that there are reasons for doing so, and in the event that the order is for a shorter period, reasons must be given

BREACHES OF DFV ORDERS

- ◉ a breach occurs when the respondent, either personally or through another person, commits any act which contravenes the terms of an order
- ◉ a breach of a DFV Order is taken very seriously by the court and is a criminal offence.
- ◉ If a respondent is charged with breaching the order they will be arrested and brought before a magistrate.
- ◉ Obviously, it will have to be established that the respondent knew about the terms of that order before they can be charged.

BREACHES OF DFV ORDERS

Breaches of a protection order carry serious penalties and can include –

- ◉ a community service order
- ◉ a good behaviour order
- ◉ a Men's DFV Program
- ◉ a fine
- ◉ a term of imprisonment

INTERSTATE ORDERS

Recognised interstate orders -

As of 25 November 2017 all DFV orders (including temporary/interim and final) issued in one jurisdiction are automatically recognised and enforceable in any other Australian State or Territory.

If a DFV order was made prior to 25 November 2017, and the aggrieved has moved interstate permanently, an application will need to be made to a court to have that order declared 'nationally recognised DFV order'.

DFV

- ⦿ The required form in Queensland is a 'DV35-Application for declaration of a DVO to be recognised interstate order'.
- ⦿ Respondents who breach the conditions of a nationally recognised DFV order will be subject to the penalties set by the jurisdiction that prosecutes the breach.

COURT PROTOCOL AND SECURITY AT COURT

- ◉ When appearing in court the Magistrate, who hears the application and decides whether to make an Order is referred to as 'Your Honour'.
- ◉ Some Magistrates Courts in Queensland provide a lawyer(s) to give advice to persons seeking protection orders. In some cases, these 'duty lawyers' may represent the aggrieved in court.
- ◉ If the application for a protection order is a private application the aggrieved may be asked some questions by the Magistrate and the responses should be brief and to the point. If the application has been made by the police, the Police Prosecutor will represent the aggrieved and address the Magistrate on his/her behalf.

OBTAINING LEGAL ADVICE

- ◉ Legal Aid Queensland provides funding for persons who are the victims of domestic violence. Call 1300651188.
- ◉ Legal Aid may refer the aggrieved to a solicitor, or a solicitor who is on the Legal Aid panel may apply for a grant of aid to represent that person.