

NAVIGATING DOMESTIC AND FAMILY VIOLENCE LAW



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We acknowledge that this resource is generic and that diverse groups may require appropriate supports alongside this information. We encourage all workers utilising these resources to identify the relevant services to best support Aboriginal, Torres Strait islander, Culturally and Linguistically Diverse groups and people with special needs.

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I. 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

The violence can be:

(a) Physical -

- (i) Pushing, shoving, hitting, strangulation, punching, etc.;
- (ii) Damaging property or threatening to do so.

(b) Sexual -

- (i) Rape;
- (ii) Forcing or coercing a person to perform a sexual activity;
- (iii) Uploading sexual images of the person to the internet without the person's consent.

(c) Verbal -

- (i) Screaming and shouting;
- (ii) Denigration;
- (iii) Name-calling.

(d) Emotional/Psychological -

- (i) Depriving a person of their liberty or threatening to do so;
- (ii) Threatening to cause injury to a child or relative of a person;
- (iii) Threatening to commit suicide or self-harm so as to frighten or intimidate the person to whom the behaviour is directed;
- (iv) Threatening to cause death or injury to an animal
- (v) Stalking or keeping a person under surveillance
- (vi) Harassing a person by phone, email or SMS
- (vii) Preventing a person from contacting family or friends;
- (viii) Making comments that undermines a person's self-esteem;

- (ix) Reckless driving of a vehicle.
- (e) **Financial**
 - (i) Withdrawing financial support;
 - (ii) Controlling how a person spends money;
 - (iii) Denying a person's economic independence such as preventing the person from getting or retaining a job or jeopardising employment, or demanding that the person hand over control of assets or income.

'Associated Domestic and Family Violence' means 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 to Domestic and Family 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.

2. WHO CAN APPLY FOR A PROTECTION ORDER?

A person who is in a 'relevant' relationship -

- (a) an intimate personal relationship; or
- (b) a family relationship; or
- (c) an informal care relationship.

may apply for a protection order.

- (a) An **intimate personal relationship** is a
 - (i) spousal relationship (and this includes a former spouse or parent or former parent of a child of the person); or
 - (ii) an engagement relationship (where two persons were engaged to be married); or

(iii) a couple relationship (a relationship between two persons if the persons have or had a relationship as a couple)

A couple relationship can exist between two persons of the same gender

(b) 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

(c) 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

3. OTHER PERSONS WHO CAN BE INCLUDED ON THE ORDER

The law can protect the Applicant's children, whether they live with the Applicant or spend time with the Applicant on a regular or on-going basis. This could include step-children or other children who spend time at the Applicant's home on weekends or school holidays.

Other persons who can be protected by the Order are members of the Applicant's family, friends, a new partner and workmates.

When domestic violence is committed against these persons they are subjected to 'associated domestic violence' 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 domestic violence. They're subjected to domestic violence if they see or hear it, e.g. seeing damaged property in their home.

4. MAKING AN APPLICATION FOR A PROTECTION ORDER

An application for a Protection Order can be made by a police officer ('Police Protection Notice'), by the person who has been the subject of the violence or by an 'authorised person' (a 'private application').

(a) Police Protection Notice

If the police investigate an incident and believe that domestic violence has been committed, a police officer will issue a police protection notice on the spot. This will immediately protect the aggrieved from further acts of Domestic and Family Violence (DFV), and the notice carries the same protection as a Court Order until the matter is heard in court. The Protection Notice will stipulate a court date when the respondent must appear and will become the application to the court.

The police will only issue a Protection Notice if it is considered that an incident of domestic violence has occurred and that an order is required to protect the aggrieved. If the police apply for a Protection Order, a police officer will appear at court on behalf of the aggrieved, but it may still be necessary for the aggrieved to attend at court.

(b) Private Application

An application for a protection order can be made by the person who has been the victim of DFV or, if the aggrieved does not wish to personally apply for an order, by an 'authorised person'. That person can be a friend, relative or community/welfare worker. The authorised person must be appointed in writing to make the application, and may make other applications on behalf of the aggrieved.

A lawyer can also be appointed to make an application for a protection order on behalf of the aggrieved.

The person who has been the victim of DFV or an authorised person must complete an application form, a 'DVI - Application for a Protection Order'. This form can be obtained on line.

The application form must contain information about the incident of violence including:

- 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.

If the person has suffered injuries doctors' reports and photographs of the injuries should be obtained, and the photographs should be date stamped. Statements should also be obtained from persons who witnessed the violence. If the person has any existing court orders, such as Family Court, Federal Circuit Court Orders or an order made in the Children's Court then a copy of that order must be attached to the application. The Application must be signed in the presence of a solicitor or Justice of the Peace and lodged at a Magistrates Court.

Once lodged, a court date will be allocated, and if an urgent Temporary Protection Order is sought, in order to provide immediate protection to the aggrieved, the application will be listed with priority. This can occur even if the application has not been served on the respondent.

The court will arrange for a copy of the application and any Temporary Protection Order to be delivered to the local police station and a police officer will then serve those documents on the respondent. Progress of the service of the document(s) can be checked by making a phone call to the police. However, even if the documents have not been served, the aggrieved will be required to attend personally at the court on the allocated date.

5. THE COURT PROCESS

(a) The first court appearance

At the first court appearance, a 'mention', 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 - this can only occur if the respondent appears personally and states that they agree with the order being made. The respondent may however agree to an order being made on a 'without admission basis' which means that they are agreeing to the order being made but are not admitting to the facts detailed in the application. An order made on a 'without admission basis' has the same force as an order that has been made after a trial.
- (ii) Seek an adjournment to obtain legal advice - if this should occur, the adjournment will generally be for a period of approximately four weeks. If an adjournment is sought, the Magistrate can make a temporary protection order to protect the aggrieved until the next court date.
- (iii) Disagree with the application, which will result in the court allocating a hearing date.

If the respondent does not attend on the first mention date, and the police can prove that the application has been served on the respondent, an order can be made in the terms sought by the aggrieved, or in other terms as may be determined by the Magistrate. Alternatively, the hearing can be adjourned or the Magistrate can issue a warrant.

(b) The trial

When the matter is allocated for trial, the Magistrate will issue directions in relation to filing and serving affidavits and issuing subpoenas. 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 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.

On the day when the matter is listed for trial the aggrieved and the respondent will have to attend court in person and answer any questions posed by the Magistrate and by the other party.

The aggrieved will give evidence first and then, if he/she has any witnesses, those persons may also be called to give evidence. The respondent or their lawyer may ask questions arising from that evidence. This is called 'cross examination'. Similarly, when the respondent gives evidence, the aggrieved may cross examine the respondent.

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.

If the application is a police application, the police prosecutor will prepare affidavits and represent the aggrieved at the trial. However, if the application is a private one, legal aid may be available to the aggrieved, and if granted, the solicitor will prepare the affidavits and represent the aggrieved at the trial.

A court hearing an application for a protection order is not open to the public. However, the aggrieved is entitled to have an adult with him/her during the proceedings to provide support.

After hearing the parties' evidence the Magistrate will make a decision as to whether a protection order should be made and what conditions should be included in that order.

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.

6. ORDERS THE COURT CAN MAKE

A **Temporary DFV Protection Order** provides the aggrieved with protection from DFV until the application can be heard by the court. Such an order will be made if a relevant relationship exists and an act of DFV has occurred.

This Order can be made even if the respondent has not been served with the application, but such an order will only be made if the court is satisfied that it is necessary or desirable to make a protection order to protect the aggrieved from DFV.

A **Final Protection Order** is an order that 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.

7. WHAT CONDITIONS CAN BE INCLUDED IN AN ORDER?

All DFV Protection Orders include a mandatory provision, namely that –

- 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.

The additional conditions that could be included are –

- preventing the respondent from contacting the aggrieved or any named person in the order. This means that the respondent cannot contact, attempt to contact or ask someone else to contact the aggrieved by telephone or any other electronic means.
- preventing the respondent from going to places which any named person frequently visits, such as a school

- preventing the respondent from going to where the aggrieved lives or works, or going within a certain distance of where the aggrieved lives or works.
- making the respondent return personal property to the aggrieved.
- ordering that the respondent to leave the house in which the aggrieved and the respondent were living (an ouster order)

8. VARIATION OF DFV PROTECTION ORDERS

An application for a variation of a DFV Protection Order can be made by

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

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

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 applicant has not appeared.

9. DURATION OF DFV PROTECTION 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 a named person from associated 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

10. BREACHES OF DFV PROTECTION ORDERS

A breach of a DFV Protection Order occurs when the respondent, either personally or through another person, commits any act which contravenes the terms of an Order. It will have to be established that the respondent knew about the terms of that Order before they can be charged.

A breach of a DFV Protection Order is taken very seriously by the court and is a criminal offence. If the aggrieved believes that the respondent has breached the terms of a DFV Protection Order, full details of that breach must be given to the police as soon as possible so that the necessary action can be taken – there is no point having an order if the terms of the order are not enforced.

If a respondent is charged with breaching the order they will be arrested and brought before a Magistrate. If the respondent enters a guilty plea they will be sentenced immediately. However, if a respondent pleads ‘not guilty’ the matter will be listed for trial.

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

II. INTERSTATE DFV PROTECTION ORDERS

Since the introduction of the National DFV Protection Order Scheme on 25 November 2017 all DFV Protection Orders issued in one jurisdiction are automatically recognised and enforceable in any other Australian State or Territory. This includes temporary/interim and final orders. These orders, known as ‘recognised interstate orders’, will be enforceable by the police and the Courts regardless of the State or Territory that issued the original order. Courts will also have the power to vary any nationally recognised order. **However**, all orders made prior to that date will not be automatically recognised.

If a DFV Protection 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 as a 'nationally recognised DFV Protection Order'. The required form in Queensland is a 'DV35 – Application for declaration of a DVO to be a recognised interstate order'.

Respondents who breach the conditions of a nationally recognised DFV Protection Order will be subject to the penalties set by the jurisdiction that prosecutes the breach. This means that if the State or Territory prosecuting the breach has a higher penalty, it will apply.

Breach of an Interstate DFV Protection Order

If circumstances arise where a breach of a recognised interstate order occurs, and the victim and the perpetrator are in different jurisdictions, police in the jurisdiction where the victim resides will conduct an initial investigation in relation to the breach. However, following the initial investigation the matter will be transferred to the jurisdiction where the perpetrator is located, and the police will then investigate the matter further and apply that jurisdiction's legislation.

In Queensland, if a recognised interstate order is found to have been breached, police may issue proceedings under section 177 of the *Domestic and Family Violence Protection Act 2012*.

It will not be a defence in proceedings for a breach of a DFV Protection Order that the respondent did not know an order was enforceable in Queensland.

12. 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'. 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.

Some Magistrates Courts in Queensland provide a lawyer(s) to give advice to persons seeking protection orders. Those 'duty lawyers' may also, in some cases, represent the aggrieved in court.

The aggrieved may take a support person to Court. That person is not permitted to speak on behalf of the aggrieved unless they have made an application to represent the aggrieved, and that person (an authorised person) must be appointed in writing. (See Paragraph 4 above).

13. OBTAINING LEGAL ADVICE

Legal Aid Queensland (call 1300 651188) provides funding for persons who are the victims of DFV. 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. If a solicitor is acting for the aggrieved pursuant to a grant of legal aid that solicitor can make the application for a protection order and represent the aggrieved in court. Advice can also be obtained from a community legal service. However, those services cannot provide representation for an aggrieved in court.

14. SERVICES AVAILABLE TO VICTIMS OF DFV

The following services can provide assistance to victims of DFV

Legal Services

Legal Aid Queensland	1300 65 11 88
Indigenous Infoline	1300 65 01 43
Violence Prevention and Women's Advocacy	(07) 3238 3425
QLD Indigenous Family Violence Legal Service	1800 88 77 00
Women's Legal Service (free call outside Brisbane)	1800 95 79 57

Domestic Violence Services

DV Connect – 24/7 Support and Accommodation	1800 811 811
DV Connect – Men's Line	1800 600 636
Sexual Assault Helpline	1800 010 120
1800 Respect 24-hour counselling	1800 737 732
Mensline Australia (24 hour)	1300 789 978

There are also domestic violence services in Brisbane, Cairns, Logan and the Gold Coast and other regional centres.

15. GLOSSARY OF LEGAL TERMS

Adjournment – when the matter is postponed to another date.

Affidavit – a signed written statement that is used by a person in court. The person making the affidavit must swear on oath, before a solicitor or Justice of the Peace, that the contents of the document are true. An affidavit is used in court to provide written evidence and is often used in place of verbal evidence. An Affidavit must be served on all parties.

Aggrieved – the person who is applying for a Domestic Violence Protection Order.

Applicant – this can be the person applying for a Domestic Violence Protection Order, but if the application is being made by the police, then the police are the applicant.

Associate – a partner, a person who lives or works with the aggrieved, or a person who assists the aggrieved, eg. a neighbour or friend.

Authorised person – a person who is authorised on behalf of the aggrieved to make an application for a Domestic Violence Protection Order.

Breach – when the respondent fails to comply with the provisions of a Domestic Violence Protection Order.

Consent Order – An order made by the court with the voluntary agreement of the respondent. A consent order is made without the Magistrate making any finding that domestic violence actually occurred.

Cross examination – when a person who is giving evidence in court is questioned about that evidence. Cross examination cannot be used to harass or badger a person.

Couple relationship – a relationship that is characterised by trust, commitment, dependence and intimacy.

Domestic and family violence – physical, verbal, emotional, economic, psychological, sexual abuse, controlling behaviour, coercion or domination.

Domestic Violence Protection Order – an order made by the court imposing conditions on the respondent to prevent the occurrence of domestic violence, eg. not coming within a certain distance of the aggrieved. A Domestic Violence Protection Order can be either a temporary order (short term) or a final order (long term).

Family relationship – a relationship between two persons who are relatives of each other. This includes a spouse, child or stepchild, parent or step-parent, sibling or half sibling, grandparent, uncle, niece, cousin or parent-in-law.

Final order – An order made by a Magistrate which remains in force for up to five years.

Informal care relationship - a relationship between two persons where one person is or was dependent on the other for assistance in daily activities because of an illness, disability or impairment.

Intimate personal relationship - a relationship where the parties have been engaged, married, living in a de facto relationship or have a child.

Mention - This is a short court appearance. The Magistrate will ask if the application has been served on the respondent. If the respondent is present in court he/she will be asked if they consent to an order being made. If there is no agreement about the order the matter will be listed for a trial.

Named person - a person who is relative of the aggrieved, a friend, a new partner or a workmate who needs to be covered by the Domestic Violence Protection Order.

Ouster order - an order directing that the respondent leave the house in which the aggrieved and the respondent were living.

Police Protection Notice - a notice issued by the police to give the aggrieved immediate temporary protection from domestic violence. Such an order is issued when the police are called to a domestic violence incident. The Police Protection Notice has the same effect as an order and lasts until the matter is mentioned in court.

Protection Order - another term for a Domestic Violence Protection Order.

Respondent - a person against whom a Domestic Violence Protection Order is made.

Service - when an application for a Domestic Violence Protection Order, or order, is served on the respondent by the police.

Spousal relationship - a relationship where the parties were married, were in a de facto relationship (including a same sex relationship) or have a child together.

Temporary Protection Order - an order made for a short period, which is in force until a final order is made. (Several Temporary Protection Orders can be made before a final order is made).

