

# Family Law Fact Sheet

## Domestic violence

Domestic violence is governed by the *Domestic and Family Violence Protection Act 1989* (Qld) ("the Act").

The purpose of the Act is to provide protection against violence committed or threatened by someone else where there is a domestic relationship such as a spousal, intimate personal, family or informal care relationship.

### What is domestic violence?

Domestic violence is any of the following acts a person commits against another person where there is a domestic relationship:

- wilful injury;
- wilful damage to the other person's property;
- intimidation or harassment of the other person;
- indecent behaviour to the other person without consent; or
- a threat to commit any of the above.

The person who commits the domestic violence need not personally commit the act or threaten to commit it in order for domestic violence to have occurred. A person who counsels or procures someone else to commit an act that, if done by the person, would be an act of domestic violence is taken to have committed the act.

### Protection Order Applications

A person who needs protection under the Act and makes a Protection Order Application ("Application") is called the "aggrieved" in that Application. The person who is alleged to have committed the act of domestic violence is called the "respondent". Sometimes the aggrieved is not the applicant who makes the Application as the police may sometimes make an Application on behalf of the aggrieved.

An Application can also protect a relative or associate of the aggrieved and their name can be specifically included as a "named person" to be protected by the Domestic Violence Order.

A Domestic Violence Order can be made by a Court against a person who committed domestic violence if the Court is satisfied that:

1. the person has committed an act of domestic violence against the other person and a domestic relationship exists between the two persons; and
2. the person:
  - (i) is likely to commit an act of domestic violence again; or;
  - (ii) if the act of domestic violence was a threat – is likely to carry out the threat.

### Conditions on Protection Orders

The conditions of a Domestic Violence Order must include a provision that the respondent be of good behaviour and must not commit acts of domestic violence or associated domestic violence against the aggrieved or named person. The Court may also impose additional Orders prohibiting the respondent from doing certain things:

- remaining at the home of the aggrieved (this condition can be made even the home is a joint home);
- entering or attempting to enter the home or workplace of the aggrieved; and
- approach within a stated distance of certain premises.

The premises may be the place of residence or work of the aggrieved.

### Ouster Orders

A Court can also make an ouster condition that the respondent vacate the premises where the aggrieved and respondent lived together or previously lived together and a Court can order that the respondent be given time in which to return to the premises to collect their belongings.

The Court may also prohibit the respondent from:

- approaching or attempting to approach the aggrieved or a named person, including stating in the order a distance within which they must stay away from the aggrieved;
- contacting, attempting to contact or asking someone else to contact the aggrieved or a named person, including for example if the aggrieved or named person has taken shelter at a refuge;
- locating, attempting to locate or asking someone else to locate the aggrieved or a named person if the aggrieved or named persons' whereabouts are not known to the respondent;
- attending at a place associated with a child of the aggrieved. The Court can also prohibit the conduct of the respondent towards a child of the aggrieved.

A Domestic Violence Order takes effect on the day it is made and continues for a period of two years. If the Court is satisfied that there are special reasons for doing so, the Court may order that a Protection Order continues for a period longer than two years.

### Temporary Protection Orders

When you first file an Application under the Act, the Court may make a Temporary Protection Order which will be in force until the matter is next returnable before the Court or until the Order is revoked.

A Court may make a Temporary Protection Order against a respondent only if it appears to the Court that an act of domestic violence has been committed against the aggrieved by the respondent. The Temporary Protection Order need only be supported by evidence the Court considers sufficient and appropriate having regard to the temporary nature of the Order.

A Court may make an urgent Temporary Protection Order in the absence of the respondent being served with the Application only when the aggrieved or named person is in danger of personal injury or property of the aggrieved or named person is in danger of substantial damage.

A Protection Order Application under the Act is to be a closed Court and is not open to the public. However, the Court may open the proceedings or part of the proceedings to the public or specific persons in some circumstances.

### Breaching of Protection Orders

If the respondent does not comply with an Order, a police officer can charge the respondent with an offence and the aggrieved or any other named person in the Domestic Violence Order can complain to a police officer that the respondent is not complying with an Order.

If you are genuinely concerned about your safety and the safety of a family member, you may want to consider obtaining a Protection Order by contacting your local police station or local Magistrates Court.

We can assist you in the completion of the Application and represent you at any mention and hearing of the matter in the event the police are not the applicant in your matter.

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