



Legislation

*The Domestic and Family Violence
Protection Act 1989*



there is
no
excuse
for
abuse



Queensland Government
Department of **Communities**

About this booklet

Domestic and family violence affects many Queensland communities, families and individuals.

The Department of Communities provides a range of innovative and preventative initiatives to address domestic and family violence in Queensland. This includes community education and awareness raising campaigns, and the provision of funding for services that support people affected by domestic and family violence, including men, women and children.

These services include regional domestic and family violence services, court support, counselling, fax-back services, telephone counselling and education and research services.

The phone numbers for the domestic and family violence regional services are included in the back of this booklet.

The purpose of this booklet is to:

- explain the *Domestic and Family Violence Protection Act 1989*
- provide information about how to access protection from domestic and family violence by applying for a domestic violence order using this Act.

For further information please see the Department of Communities website www.communities.qld.gov.au/violenceprevention or contact the Violence Prevention Team on **(07) 3224 4477**



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The legislation

The *Domestic and Family Violence Protection Act 1989* (the 'Act') aims to provide safety and protection for people in domestic relationships who are experiencing domestic and family violence.

The Act defines domestic relationships as spousal relationships, intimate personal relationships, family relationships and informal care relationships.

Women experience domestic and family violence in the majority of cases, however, men can also experience it.

The Act provides protection to those people experiencing domestic and family violence by allowing a court to make a domestic violence order. The domestic violence order aims to prevent domestic and family violence from occurring within a domestic relationship by restricting the behaviour of the person committing the abuse (the respondent).

The Act recognises that some people may not want to end their relationship but just want the violence to stop. This means that the person seeking protection and the person who committed the abuse can continue to have contact with each other and live in the same household if that is what they both want.

The information contained within this brochure should only be used as a guide. Legal advice should be sought from a solicitor. Copies of the *Domestic and Family Violence Protection Act 1989* can be obtained from Goprint by telephoning (07) 3246 3399 or by visiting www.legislation.qld.gov.au

What is domestic and family violence?

Domestic and family violence is abusive and violent behaviour used by one person to control and dominate another person within a domestic relationship.



Domestic violence is defined in the Act as:

- **Wilful injury** to the other person such as punching, hitting, slapping or choking;
- **Wilful damage** to the other person's property such as breaking possessions, punching holes in walls or hurting pets;
- **Intimidation or harassment** of the other person such as following/ stalking, repeatedly telephoning, or threatening an aged or disabled person with the withdrawal of care;
- **Indecent behaviour** towards the other person without consent such as forcing them to engage in sexual activity, or unwanted sexual contact; or
- **A threat to commit any of the acts mentioned** above towards the other person.

Domestic violence also includes one person in a domestic relationship asking or getting someone else to injure, intimidate, harass or threaten the other person, or damage the other person's property.

What are domestic relationships under the Act?

Each of the following are defined as domestic relationships between two people:

Spousal relationships - people who are married, separated or divorced, the biological parents of a child, or two people who are living together or have previously lived together as a couple.

Intimate personal relationships - people who are or were engaged to be married to each other including a betrothal under cultural or religious tradition. It also includes people who are or were previously dating and whose lives have become enmeshed to the extent that the actions of one of them affect or affected the actions or life of the other.



To decide whether an intimate personal relationship exists the court may consider the particular circumstances of the relationship such as the level of trust and commitment, the length of time the relationship has existed or did exist, the frequency of contact between the people, or the level of intimacy between the people.

Family relationships - people who are relatives of each other by blood or marriage such as a grandparent, aunt, uncle, step-parent, sibling, cousin or child (18 years and over).

The relatives of those who are in or have been in a de facto relationship are included in the definition of a family relationship.

A relative also includes a person it is reasonable to regard as a relative. This is considering that for some people the concept of a relative may be wider such as for Aboriginal people, Torres Strait Islanders, members of certain non-English speaking background communities and people with particular religious beliefs.

Informal care relationship - you are either providing informal care to someone with an illness, disability or impairment, or you are receiving informal care from someone as a result of your illness, disability or impairment. An informal care relationship exists where the care is provided without payment. An informal care relationship is not a relationship where money is paid for care, or where the care is received from an organisation such as Bluecare or Meals-on-Wheels. If you are the carer and you receive a carer payment from the Australian Government you are covered by the *Domestic and Family Violence Protection Act 1989*.

Who are the ‘aggrieved’ and ‘respondent’?

The **aggrieved** is the person for whose benefit the domestic violence order is made and the **respondent** is the person against whom the domestic violence order is made.



What is a domestic violence order?

A domestic violence order is an order made by the court that includes conditions that restrain, restrict and prohibit the behaviour of the respondent in order to prevent further domestic violence.

In the *Domestic and Family Violence Protection Act 1989* a domestic violence order means either:

- A protection order; or
- A temporary protection order.

A **protection order** is the order made by a Magistrate when they make a final decision.

A **temporary protection order** is an order made by a Magistrate that only lasts for a short time.

The Act allows the court to make a domestic violence order against a respondent if the court is satisfied that:

- The respondent has committed an act of domestic violence against the aggrieved; and
- The respondent is likely to commit an act of domestic violence again; or
- If the act of domestic violence was a threat and the respondent is likely to carry out the threat.

A domestic violence order can protect the aggrieved, relatives and associates of the aggrieved who are named in the order.

A domestic violence order is a civil order and not a criminal matter. However a respondent who is convicted of breaching the order (disobeys the order) commits a criminal offence.



What are the conditions of a domestic violence order?

The two standard conditions on all domestic violence orders are that:

- 1. The respondent must be of good behaviour towards the aggrieved and not commit domestic violence;**
- 2. The respondent must be of good behaviour towards any named person in the order and not commit an act of associated domestic violence against the person.**

Under the *Weapons Act 1990* a person may not possess a weapon, or a weapons licence if a domestic violence order is made against them.

The Act allows the court to include information about any weapons or weapon licences held by the respondent on the domestic violence order.

The order will inform respondents that their licences have been revoked and provide information about the surrender of their weapons and weapon licences.

In addition to the standard conditions, the court can impose extra conditions to help protect the aggrieved, their relatives and associates from further domestic and family violence. These conditions may include stopping the respondent from:

- Approaching a place where the aggrieved works or lives;
- Remaining in a home where the aggrieved and respondent used to live together (the court may allow the respondent to return to the home to collect property);



- Approaching the aggrieved, their relatives or associates named in the order, including stating a distance from which the respondent may not approach the aggrieved (for example 100m); and
- Going to a child's school or day care centre.

A court may also order that:

- The respondent return property belonging to the aggrieved; or
- Allow the aggrieved to return to a former home to retrieve property.

The court does not automatically make an order preventing the respondent from living with the aggrieved. The aggrieved must request the court to make this specific condition.

Who can apply for a domestic violence order?

An application for a domestic violence order may be made by:

- The aggrieved (the person who has experienced the domestic and family violence);
- An adult authorised in writing by the aggrieved such as a solicitor or community worker;
- An adult whom the court believes is authorised by the aggrieved even though the authority is not in writing, for example, if the aggrieved has a physical disability that prevents this;
- A police officer;
- A guardian for a personal matter of the aggrieved, or an administrator for a financial matter of the aggrieved, under the *Guardianship and Administration Act 2000*.
- The Adult Guardian who considers the aggrieved does not have the capacity to apply for a protection order; or
- A person appointed as the aggrieved's attorney under the *Powers of Attorney Act 1998* and the person makes the application under the enduring power of attorney.



Who else can be protected by a domestic violence order?

Children may be named on a domestic violence order but the aggrieved must tell the court of any Family Court Orders or Family Court Order applications. The Magistrate must consider any Family Court Orders and consider whether contact between a child and the aggrieved or the respondent is relevant in making a domestic violence order.

In some circumstances it is possible for the Magistrate to temporarily suspend earlier Family Court Orders to protect the aggrieved and their children.

The relatives or associates of the aggrieved can be named on the domestic violence order if the respondent has committed or threatened to commit an act of domestic violence against them.

Being named on the order provides the relatives or associates of the aggrieved with the same standard of protection as granted to the aggrieved.

Can children and young people be applicants and respondents for domestic violence orders?

Children and young people under 18 experiencing domestic and family violence in a spousal relationship, intimate personal relationship or an informal care relationship can apply for a domestic violence order. They may be the respondent or the aggrieved in the domestic violence order. They cannot be the aggrieved or respondent under the definition of a family relationship in the Act.

If the young person is under 16 and is the aggrieved or the respondent in a domestic violence order all documents including applications and protection orders must be given to the child's parent as well as the child.

If the young person is at least 16, a copy of the documents will not be given to the parent/s unless the court specifically orders it.



The Act allows the court to adjourn a domestic violence application hearing if the child or young person has not had reasonable opportunity to obtain legal representation. The court will not adjourn the hearing if the child or young person has made an informed decision to forgo legal representation or if the child is an aggrieved and has a police officer, solicitor or an authorised person representing them.

Children and young people under 18 cannot apply for a domestic violence order against their parent/s as this is considered a child protection issue and should be dealt with under the *Child Protection Act 1999*.

Parents cannot apply for domestic violence orders against their children who are under 18. However, if the child is 18 or older then the parents may apply for a domestic violence order. This might be an older parent applying for a domestic violence order against their adult son or daughter.

What is the process for getting a domestic violence order?

Application

Magistrates Courts have application forms for domestic violence orders.

The applicant needs to fill in the form and lodge it at their local courthouse.

The applicant will be given a first court date (called the mention) when they lodge the application form.

The police will give a copy of the application and a summons to appear in court for the mention to the respondent.



The mention

If both the applicant and the respondent are in court at the mention and agree to the order the Magistrate may make a protection order.

If the two parties do not agree the Magistrate may make a temporary protection order and/or set a date for the hearing.

If the respondent is not present at the mention the court may make a final domestic violence order. This can only happen if the police have served the respondent with the application and a summons to appear at the mention.

If the respondent is not present and has not been served with a copy of the application and a summons, the court may adjourn the case and make another date for the mention. If this happens the court may also make a temporary protection order that is valid until a final decision is made.

The hearing

A hearing may occur if the respondent and aggrieved do not agree about the application for a domestic violence order. At the hearing the Magistrate will listen to evidence from the aggrieved, the respondent and any relevant witnesses.

The court will then make a decision about whether a domestic violence order should be made. As the matter is a civil matter, the decision-making threshold is lower than that of a criminal matter and is based on the 'balance of probabilities' rather than 'beyond a reasonable doubt'.

A domestic violence order is usually made for a period of two years. In certain circumstances it may be made for longer.



What if urgent protection is needed?

If the aggrieved is in danger and needs protection urgently they should contact the police. The police may be able to apply to the court for an urgent temporary protection order.

When the aggrieved is lodging the application for a domestic violence order at a Magistrates Court registry they can also ask for an immediate hearing so that an urgent temporary protection order may be made.

The court will only make an urgent temporary protection order without the respondent being served with a copy of the application and a summons if it appears to the court that:

- 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.

Who can be present in court during domestic and family violence hearings?

Members of the public are not allowed inside the court during a domestic violence hearing. The applicant for a domestic violence order can have a person in court with them for assistance and support. The support person can be a friend, relative or community worker.

Details about domestic violence proceedings that might identify the people involved cannot usually be published. Published means in newspapers, magazines, or broadcast on the radio or television or by other means that releases information to the general public.



What happens when the domestic violence order is made?

The Act states that the court has a duty to explain the domestic violence order to the respondent and the aggrieved if they are in court when the order is made.

A clerk of the court, an interpreter, a local community justice group or elders may explain the order, verbally or by the use of written notes.

The respondent must be given a copy of the order. The police will give the respondent a copy of the order if the respondent was not present in court when the order was made.

What happens if the respondent breaches the domestic violence order?

If a respondent is aware of the domestic violence order and disobeys it then they may be charged with breaching the domestic violence order.

This is a criminal offence and may result in serious penalties, including a maximum of two years imprisonment.

How can a domestic violence order be changed or revoked?

The aggrieved, respondent, an authorised person or a police officer can apply to change or revoke (stop) a domestic violence order. The application needs to be lodged at a Magistrates Court.

The respondent and aggrieved must receive a copy of the varied domestic violence order. The Police can do this if the aggrieved is trying to increase the protection provided to them.

The Magistrate must be convinced that the aggrieved is not being pressured or threatened by the respondent before they will revoke a domestic violence order.



What if the aggrieved or respondent disagree with the Magistrate's decision?

If the aggrieved or respondent were in court and one or both parties do not agree with the Magistrate's decision they may appeal to the District Court within 28 days of the Magistrate's decision.

If the respondent was not in court for the Magistrate's decision they have 28 days from the time the order was served or given to them.

How is a domestic violence order registered if the aggrieved moves to a new state, territory or New Zealand?

It is important that the aggrieved registers their domestic violence order with the Magistrates Court every time they move to a new state, territory or New Zealand. A domestic violence order made in any Australian state or territory or in New Zealand provides similar protection for the aggrieved after it has been registered with the Magistrates Court in the area that the aggrieved has moved to. It does not cost anything to register an interstate order.

The aggrieved need not notify the respondent of an application for the registration or variation or revocation of an interstate order.

The aggrieved must provide written consent to the court before the respondent can be told about the interstate registration or the new address of the aggrieved.

The Magistrates Court can vary or stop an interstate order once it has been registered in that state, territory or in New Zealand.



What if the aggrieved and respondent rent a property together?

If the two parties to a domestic violence order share a rented house or flat they can ask the Residential Tenancy Tribunal to make an order about the rented premises if domestic violence has occurred.

The Residential Tenancy Tribunal can make orders including:

- Inserting the name of the aggrieved on the lease as the tenant (even if it was not originally on there);
- Removing the respondent or aggrieved's name from the lease; or
- Ending the lease.

To get an order about a lease the aggrieved needs to complete a separate application form. This can be done at the same time as an application for a domestic violence order is made at the Magistrates Court. The Magistrate needs to be asked to make a decision at the same time as they make a decision about a domestic violence order.

For more information contact the Residential Tenancies Authority on 1300 366 311.

What are the powers of the police?

The police can play an important role in responding to domestic and family violence. Some of the actions police can take include:

- Investigating suspected domestic violence;
- Applying for a domestic violence order if they are satisfied domestic violence has occurred;
- Entering and searching premises without a warrant if they suspect domestic violence has occurred or there is a risk of domestic violence occurring soon;
- Seizing anything that has been or may be used to commit domestic violence;



- Taking the person committing the violence into custody if they believe the aggrieved or the property of the aggrieved is in danger of domestic violence. The person is not under arrest and can be held for a maximum of four hours;
- Asking a Magistrate to make a temporary protection order by telephone, fax, radio or another similar device; and
- Investigating breaches of a domestic violence order when a respondent continues to commit domestic violence after the order has been made.

They may also charge a person with a criminal offence if sufficient evidence is available that a breach of a domestic violence order has occurred.

Further information

The following booklets are available free of charge:

Increasing your safety: Information for people who experience abuse and violence in relationships.

This booklet contains information for people who experience domestic and family violence.

Stopping abuse and violence: Information for people who use abusive and violent behaviour in relationships.

This booklet has helpful information for people who use abuse and violence in relationships.

To obtain a free booklet please contact:

Violence Prevention Team
Department of Communities
GPO Box 806
BRISBANE Qld 4001

Telephone: (07) 3224 4477

For further information please visit

www.communities.qld.gov.au/violenceprevention



Some helpful services

An increasing number of agencies in Queensland are now offering services that provide information, referral, counselling and support for people involved in domestic and family violence. Those people wishing to learn more should also consult their local telephone book for services located in their region.

Remember: Don't let anyone's life be placed in danger, especially your own. In an emergency, call the police on **000** or ask someone else to contact them for you.

Statewide

dvconnect

womensline 1800 811 811
(womensline assists women to obtain refuge accommodation, counselling and referral to other services)

mensline 1800 600 636
(mensline provides counselling, information and referral to men affected by domestic and family violence)

Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service

Brisbane (07) 3844 2450
Statewide 1800 442 450

Adult Guardian

Brisbane (07) 3234 0870
Regional 1300 653 187

Crisis Care (24 hours) 1800 177 135
(for concerns about children)

Disability Information and Awareness Line (DIAL)

Brisbane callers (07) 3224 8444
Toll free 1800 177 120
TTY Brisbane callers (07) 3224 8021
TTY Toll free 1800 010 222

Elder Abuse Prevention

Unit Helpline 1300 651 192
(Monday to Friday 9am-5pm)

Lifeline 13 11 14
24 hour Crisis Counselling Line

Legal Aid Queensland 1300 651 188

Public Trustee 1300 651 591

Residential

Tenancies Tribunal 1300 366 311

Seniors Advocacy Information and Legal Service 3254 1811

Seniors Enquiry Line 1300 135 500
TTY (07) 3250 1928

Statewide Sexual Assault Helpline 1800 010 120
24 hour service

Women's Legal Service

Brisbane (07) 3392 0670
Regional 1800 677 278

Regional areas

Domestic and family violence regional services provide support, counselling, referral and information to people affected by domestic and family violence.

Brisbane (07) 3217 2544

Cairns (07) 4031 6817

Caboolture (07) 5498 9533

Emerald (07) 4982 4288

Gold Coast (07) 5532 9000

Mackay (07) 4957 3888

Ipswich (07) 3816 3000

Roma (07) 4622 5230

Logan City (07) 3808 5566

Toowoomba (07) 4639 3605

Sunshine Coast (07) 5479 5911

Townsville (07) 4721 2888

How do I get a Domestic Violence Protection Order?

What happens at court?

Fill out the protection order application form (DV1 form). Lodge it at local Magistrates Court. **

** Urgent temporary protection order

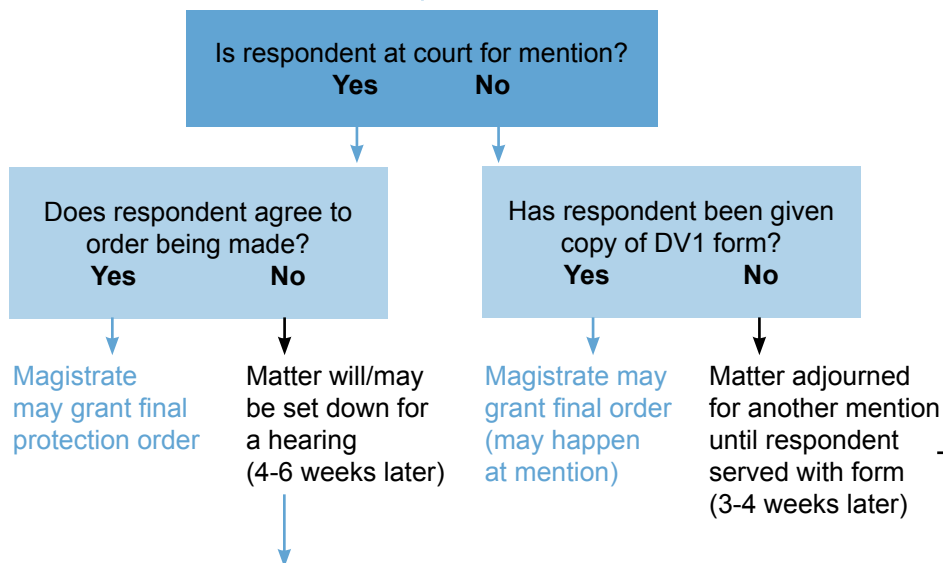
Ask to speak to either the Court Registry staff or a police officer if you think you need urgent protection

(The police often fill out these forms on behalf of the person wanting protection)

Police will give copy of form to respondent (person you need protection from) and give them a summons to appear in court at the mention.

Mention

First court date 3-4 weeks after form is lodged at court. This is not a hearing. Magistrate needs to know what is happening with protection order application.



Hearing

If your matter is set down for a hearing, get legal advice quickly.

At the hearing, the Magistrate will listen to evidence from the person wanting protection, the respondent and relevant witnesses, and make a decision about whether a domestic violence protection order should be made.

At the hearing you may be represented by a police prosecutor, legal aid solicitor, private solicitor or yourself.

Some helpful services

An increasing number of agencies in Queensland are now offering services that provide information, referral, counselling and support for people involved in domestic and family violence. Those people wishing to learn more should also consult their local telephone book for services located in their region.

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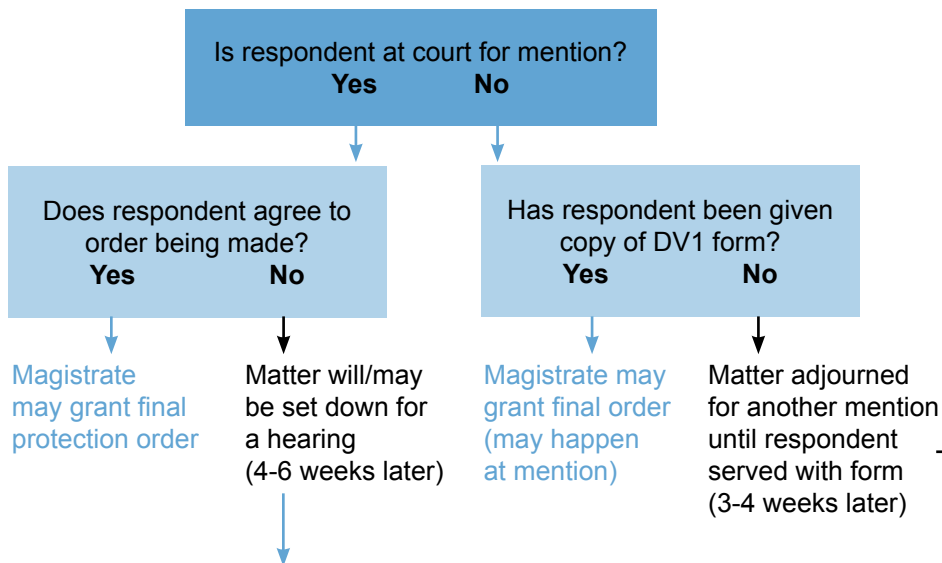
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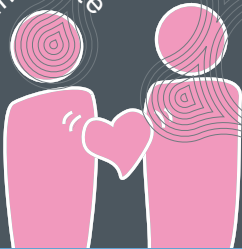
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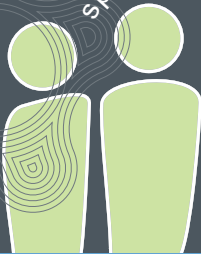
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intimate



spousal



family



informal care

