

DOMESTIC AND FAMILY VIOLENCE PROTECTION ACT

Presented by
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Overview

- Brief Overview of DV Legislation
- How to complete an Application
- What Orders to seek?
- The court process
- Interface with Family Law
- Questions?



Purpose/Objects of the Act

- “An Act to provide for protection to a person against violence committed or threatened by someone else if a **RELEVANT** relationship exists between the persons”
- Maximise safety, protection and well being and minimise disruption to lives
- Prevent and reduce DV
- Prevent and reduce exposure of children to DV
- Accountability of perpetrators

Principles - s4

- Safety, protection and well being of people affected by DV is paramount
- Persons affected should be treated with respect
- Disruption to their lives should be minimised.
- Perpetrators should be held accountable
- Recognition of persons with special vulnerabilities e.g. women, children, indigenous, disability, culturally diverse background, elderly, lesbian, gay, bisexual, transgender, intersex
- Identify the person who is most in need of protection
- Civil response should work with criminal response

Relationships covered (s13)

Relevant relationships are:

- Intimate personal relationships
- Family relationships
- Informal care relationships



Intimate Personal Relationship

- Intimate personal relationship covers spousal relationships, engagement relationships and couple relationships
- In deciding if a Couple relationship exists factors such as the degree of trust, commitment and dependence (incl financial dependence), intimacy, frequency of contact, length and exclusivity of r'ship may be considered

Family Relationship

- A Family Relationship exists if 1 person is, or was, the relative of the other
- Examples – spouse, child, stepchild, parent, step-parent, aunt, cousin, mother-in-law
- A relative is also a person regarded as a relative or someone who regards himself or herself as a relative
- The term “relative” may have a wider concept for some people
 - Examples provided in the *Domestic and Family Violence Protection Act* are
 - *Aboriginal people*
 - *Torres Strait Islanders*
 - *members of certain communities with non-English speaking backgrounds*
 - *people with particular religious beliefs*

Informal Care Relationship

- An informal care relationship exists between 2 persons if 1 of them is or was dependent on the other person for help in an activity of daily living
- Examples of an activity of daily living include:-
 - *dressings or other personal grooming*
 - *preparing a person's meals or help with eating*
 - *shopping for groceries*
 - *telephoning for medical appointments*

An informal care relationship does not exist between a child/parent or if the arrangement is a commercial arrangement

What is DV (s8)

- Physically or sexually abusive
- Emotionally or psychologically abusive
- Economically abusive
- Threatening
- Coercive
- In any way controls or dominates and causes fear for safety or well being
- The Act gives lists of specific behaviours included eg unlawfully stalking, unauthorised surveillance, threatening suicide, harming or threatening an animal, threatening harm or injury to another person



Emotional Abuse (s11)

- Behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person

Examples given include:

- Remaining outside a residence/place of work
- Threatening to withhold medication
- Preventing a person's contact with family and friends
- Repeated text messages, email social networking
- Repeated derogatory taunts



Economic Abuse (s12)

- Behaviour that is coercive, deceptive or unreasonably controlling that denies economic or financial autonomy or fails to meet reasonable living expenses

Examples given include:

- Removing or keeping property/access to joint property
- Coercing a person to claim social security payments
- Coercing a person to sign documents eg EPA/contract
- Preventing a person from seeking employment



Associated Domestic Violence

Associated domestic violence means domestically violent behaviour by a respondent towards:-

- a child of an aggrieved; or
- a child who usually lives with an aggrieved; or
- a relative of an aggrieved; or
- an associate of an aggrieved

Exposure to DV (s10)

- A child is exposed to DV if the child sees or hears DV or otherwise experiences the effects of DV

Examples of exposure to DV include:

- Seeing or hearing an assault
- Overhearing threats of physical abuse or derogation
- Comforting a person who has been abused
- Observing bruising or injuries to another person
- Cleaning up property damaged
- Experiencing financial stress caused by economic abuse



How do I get a Domestic Violence Order – The application

- Key terms: The person in need of protection is called the “Aggrieved”. The person alleged to have used violence is called the “Respondent”
- You can apply for an order yourself, or through police, solicitor or authorised person (friend, relative, community/welfare worker).
- You should seek “LEGAL ADVICE” before you apply
- The application must be on the correct form (DV 1 Application for a Protection Order)

FORM DV1

Domestic and Family Violence Protection Act 2012 (s.32)

Application for a Protection Order

Please note: A copy of this application will be given to the respondent

1. Aggrieved's details

If you do not want the respondent to know your home address please either:

- Give an address where court documents can be sent e.g. post office box or
- Complete an "Aggrieved Details Form" which will not be provided to the respondent

Given Name/s

BETTY

Family Name

SMITH

Date of birth

9 / 08 1970

Address

PLEASE DO NOT DISCLOSE
26 Forever Street, Breakwater Bay, Qld, 4000

Gender

Female

Home Number

(07) 3000 3000
DO NOT DISCLOSE

Mobile Number

0400 200 100
DO NOT DISCLOSE

Work Phone

(07) 1234 5678
DO NOT DISCLOSE

Email

bettyb@yahoo.com

SPI # (QPS Only)

Does the aggrieved require an interpreter? No

Yes

Language/Dialect:

Does the aggrieved identify as: Aboriginal

Torres Strait Islander

Aboriginal and Torres Strait Islander

Does the aggrieved have a disability, illness or impairment where support and/or special arrangements are required? No

Yes

Where do I get the form?

- At the registry of Magistrates courts
- Solicitors
- Online – www.courts.qld.gov.au

The screenshot displays the Queensland Courts website interface. At the top, the Queensland Courts logo is visible, along with a navigation menu including Home, About us, Courts, Tribunals, Representing yourself in court, For jurors, For lawyers, and Media and the public. The main content area is titled 'Domestic and family violence' and includes a breadcrumb trail: Home > Courts > Magistrates Court > Domestic and family violence. A 'Print Email Share' button and a 'Hide your visit' link are present. The central text states that new court rules will apply to Domestic and Family Violence Protection Act 2012 proceedings from 28 February 2015. It also mentions that the Domestic and Family Violence Protection Rules 2014 are available online. A list of updated forms (Form DV21, Form DV22A, Form DV22) and new forms (Form DV25, Form DV26, Form DV27, Form DV29, Form DV30, Form DV32, Form DV34) is provided. A section titled 'What is domestic violence?' defines it as physical or sexual abuse, or emotional or psychological abuse. On the right side, there is a 'Forms and fact sheets' section with a list of forms including Form DV1, Form DV1a, Form DV1b, Form DV1c, Form DV4, Form DV9, Form DV11, Form DV12, Form DV13, Form DV14, Form DV16, Form DV21, Form DV22, Form DV22a, Form DV25, Form DV26, Form DV27, Form DV29, Form DV30, Form DV32, and Form DV34.

Police Applications

- If police suspect domestic violence has been committed they must investigate your complaint. If they reasonably believe that violence has occurred they can:
 - Apply to the court on your behalf for an Order.
 - They will appear on your behalf in court
 - They can apply to vary an existing Order with further conditions to better protect
 - Issue police protection notice
 - Take the respondent into custody.
- Usually the police will continue to assist the aggrieved to get the Order, if the Respondent opposes an Order being made.

If you get somebody else to apply for an Order

- You must give the person applying for the Order written authority. Q13 &14 of application.

AUTHORITY

I, Betty Smith, of c/- Legal Aid Queensland authorise Mary Jones of Legal Aid Queensland to act on my behalf in my application for a domestic violence order under the provisions of the *Domestic and Family Violence Protection Act 2012*.

Taken at Brisbane

This 17th day of October, 2012.

Signed: *Betty Smith*

Witnessed: *Jane Dempsey*

Private Applications

- Must be completed on the correct form (DV1)
- Legal advice should be sought prior to application
- Provide as much detail on the application form as possible.
 - When did it happen?
 - Where did it happen?
 - Who was there?
 - What was the outcome? (police called, injuries)
 - How did you feel?
- Gather as much evidence to support your application: -
 - Photo's of injuries
 - Statements of witnesses
 - Text messages, emails, doctors reports, court orders (Family Court), social media

Private Applications (con't)

- Questions 1 – 3, ask for details about the aggrieved. Agg's contacts do not need to be disclosed, and
 - Identifying details for the respondent – as much detail as possible to assist police with service.
 - If the Respondent cannot be located to have the application served, the Application will ultimately be dismissed.
- Question 5 – asks for the details about the relationship between aggrieved & respondent – if intimate personal relationship, put as much detail as possible about the length of relationship, frequency of contact, and degree of intimacy...

Example Application

Proceed to Question 4

4. Temporary Protection Order

Do you wish the court to make a temporary protection order? No Yes

If you request a temporary protection order before the respondent has been served with a copy of the application, you will have to show the court that there are reasons why it is necessary or desirable for you or a named person to be protected by a temporary protection order before the respondent is served with a copy of the application.

Please state reasons below:

- a) I separated from the respondent (Bobby) three weeks ago on 1 October 2012. At about 8pm, after I had finished clearing up the dishes, I went into the lounge room and told Bobby I wanted to separate.
- b) He started yelling at me saying "You stupid cow", "you're a bad mother", "you're useless".
- c) Bobby then pushed the TV off the stand on to the floor causing it to smash. He then took my mobile phone from my handbag and stomped on it with his foot.
- d) He then grabbed me by the hair and waved his fist in my face. He had his face up close to mine and said in a low angry tone "You bitch you try and cross me and I will make sure you wish you were dead." I called 000. Mary Jane was awake and saw the police take Bobby away.
- e) The respondent (Bobby) sent me a text message last night (24/10/12 at 9.13pm) saying "coming over at 4 tomorrow u better hand over my stuff if not I'll teach you a lesson you won't forget."
- f) I don't want Bobby to come anywhere near me at the moment. I am worried Bobby will lose his temper and hurt me if he comes over.

Example Application -

Proceed to Question 6

6. Grounds for a protection order

State grounds as to why a protection order is necessary or desirable to protect the aggrieved. It must be shown that domestic violence has occurred. Include specific example of behaviour by the respondent. *Attach extra pages if necessary*



Relationship/Children

- a) I met Bobby in 2007 and we have been in an on-and-off de facto relationship since that time. Mary Jane (date of birth 1/1/08) who is four years old is our only child together. Mary Jane has lived with me since we separated.

Recent Incidents

- b) Since we separated, I have seen Bobby parked outside my workplace, my house and Mary Jane's day care centre. Last Friday, 10 October 2012, at 9pm he sent me a text message when I was leaving work, it said: *"Pretty dress you've got, shame about the ugly body wearing it."*
- c) On Monday 12 October 2012, Bobby rang my boss at work and told him that I was a slut, and that I should get the sack. He then started calling me about ten times on my work phone number and each time I answered the phone he called me a bitch and a slut and that I should watch my back. I was too frightened to answer my phone that day which affected my ability to do my job.
- d) On Tuesday 20 October 2012, in the evening, I heard my dogs barking loudly outside. I had my cousin Peter over that night to stay with me, as I was feeling frightened after what had happened at work that day. At 9:10pm I received a text message from Bobby saying *"you're dead now...who's the man?"*

Conditions (s56 & 57)

- Mandatory – to be of good behaviour and not commit domestic violence
- Court considers what is necessary and desirable
- Specifically refers to principle that safety, protection and well being is paramount – not to contact, not approach not to locate the aggrieved/named person
- Recovery of personal property s59
- Contact by lawyer not prohibited (s60)
- Contact by victim advocate not prohibited (s61)



Conditions cont.

The Court **must** consider whether imposing any other condition (*whether or not it's been asked for*) is necessary or desirable to protect –

- the aggrieved from domestic violence
- A named person from associated domestic violence, or
- A named person who is a child from being exposed to domestic violence: new s. 57(1).

Ouster condition (s64, 65)

- Emphasis on safety and stability for children
- Consider minimising disruption, retaining continuity and social connections and support
- Maintaining education, child care, training arrangements
- Accommodation needs of the respondent
- Return condition to allow respondent to retrieve property – time of return, police accompaniment, duration of return
- Return condition does not allow taking personal property needed for persons still remaining on the property
- Court will consider views or wishes of aggrieved

What conditions to seek?

- Conditions required to ensure safety – the legislation is preventative... consider this carefully.
 - if there is no evidence of Respondent attending at your place of work, do you need an order stopping it?
 - If the aggrieved is calling the respondent – is a no contact clause necessary?
- It is then necessary to tell the court why you need the condition.

Proceed to Question 6

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What conditions to seek

- In this example, the aggrieved is seeking an Order preventing the Respondent from contacting her employer (Q11)

B) Do you want to prohibit the respondent from remaining at, entering or attempting to enter or approaching premises? No Yes

If yes, the premises to which the respondent is not to come or approach are:

The aggrieved's place of residence The aggrieved's place of employment The place the aggrieved is currently staying

Places where the aggrieved frequents, namely

Associates/relatives place of residence (if there is a named person at Question 8)



Give reasons

- a) I do not want Bobby to come to my place of work because of the threats that he has made towards my employer, and because he always rings me at work. I am afraid that he will cause further trouble for me at work and I am frightened that I will lose my job. His behaviour has caused me a lot of stress.
- b) I do not want Bobby to come to my home. He has come around to the house at night causing a disturbance, and has frightened Mary Jane. Bobby has also been seen sitting in his car across the road from the house early in the mornings. This behaviour frightens me.

Named persons (s 52)

- Necessary or desirable test
- Unborn child can be named to take effect when child is born (S67)
- Can extend to unnamed infant



Naming children (s 53, 54)

- Necessary or desirable test
- Court **must** consider naming child even if not requested in the application
- To protect the child from associated domestic violence (s9) or being exposed to domestic violence (s10)
- Court can request information available at the time from child protection authority who **must** comply if respondent contests the naming of the children (s55)
- Each party must be given a copy of the information provided and an opportunity to respond



Court - Urgent TPO (s47)

- Ex parte orders (without presence of Respondent) can be made if “necessary and desirable”
- S47(2) The court may make a temporary order.....**only if the court is satisfied** that the making of a temporary protection order is necessary or desirable to protect the aggrieved, or another person named in the application from domestic violence”.
- Evidence for Temporary Order - ...”**that the court considers sufficient an appropriate..**” (s46)



Court – Mention phase

- There may be 2 or 3 mentions of the application in court prior to a final order being made....this may be because
 - Difficulty in locating the Respondent,
 - Respondent adjourns to obtain legal advice
 - The Respondent may file a ‘cross application”
- Each court event is an opportunity to resolve the matter, or progress matter to the final hearing:
 - Negotiations about conditions sought/term of the order
 - The Respondent may consent to an Order.
 - The Respondent may offer an undertaking
 - Aggrieved may discontinue
- Parties must attend court:
 - Aggrieved – no appearance (application may be dismissed)
 - Respondent – no appearance (and has been served, Final Order)

Evidence

- s145:
 - A court is not bound by rules of evidence or practice or procedure applying to courts of record
 - A court may inform itself in any way it considers appropriate
 - The court need only to be satisfied of the matter on the balance of probabilities
 - The court need not have the personal evidence of the aggrieved before making a domestic violence order

When can a Court make a Protection Order?

If the Court is satisfied that:

- A relevant relationship exists between the aggrieved and the respondent; and
- The respondent has committed domestic violence against the aggrieved; and
- The protection order is necessary or desirable to protect the aggrieved from domestic violence

The Court will make a Protection Order

Necessary or Desirable (s37)

- The Court must be satisfied that the Protection Order is necessary or desirable to protect the aggrieved from domestic violence (1(c))
- In deciding if a domestic violence order is necessary or desirable the Court:
 - Must consider the principles mentioned in section 4;
 - May consider whether a voluntary intervention order has previously been made and if the respondent has complied with this order (2)

Consent Orders (51)



- Provided there is a relevant relationship the court does not need to make findings (except for child respondents)
- Respondent can consent without admissions
- Consent of the aggrieved is usually needed if the application is a police application
- But if police officer considers it promotes “safety, protection and well being” and aggrieved cannot be contacted
- Discretion of the court not to accept consent order if it considers it poses a risk to the safety of aggrieved and named persons including children

Court – Final Hearing

- The matter will be listed for a Final Hearing if matter cannot be resolved.
- The Respondent may not consent to an Order being made, then matter is listed for a final hearing.
- The Final Hearing is when a magistrate listens to why the aggrieved needs a domestic violence order, and to the respondent's version of events.
- Conduct of hearings: -
 - Most courts make directions to file affidavit material to support the application
 - Courts will usually hear the evidence orally as well.

Court - Directions

- The court may make directions about the filing of affidavit material to support the Application for an Order.
- They usually require both the aggrieved and the respondent to file affidavit material.
- It is important that you comply with the directions made by the court
 - (i.e. that the aggrieved file's and serves, affidavit by XX/XX/2013....)
- Consequences for non compliance –
 - Aggrieved may only rely on evidence already before the court (same for Respondent)
 - Need to seek “leave” of the court (permission), to allow further evidence to support the application.

Court: The affidavit

- Remember to obtain a final order you need to satisfy the court that:
- Section 37:
 1. THAT A RELEVANT RELATIONSHIP EXISTS
 2. THE RESPONDENT HAS COMMITTED DOMESTIC VIOLENCE
 3. THE PROTECTION ORDER IS NECESSARY OR DESIRABLE TO PROTECT THE AGGRIEVED FROM DOMESTIC VIOLENCE
- The aggrieved's evidence **MUST** cover all of these elements
- Must be completed on the approved form – (courts website)

File Number:
LFR:
Registry

Form DV25
MAGISTRATES COURT OF QUEENSLAND
Domestic and Family Violence Protection Rules 2014
Rule 35

AFFIDAVIT

Aggrieved *(Insert Name)*

Respondent *(Insert Name)*

Applicant *(Insert Name)*

I, *(full name)*:.....
of *(address for service)*:.....
(occupation):.....
state on oath (or: solemnly and sincerely affirm and declare):

Betty's draft affidavit... Example Only..

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: [NAME OF COURT]
NUMBER: 000000

Aggrieved: BETTY SMITH
AND
Respondent: BOBBY BLOGS

AFFIDAVIT

I BETTY SMITH C/O [ADDRESS], solemnly and sincerely affirms and declares:

1. I am the 'Aggrieved' in these proceedings.
2. The Respondent is my former partner BOBBY BLOGS born 10/10/1970
3. On 3 January 2013 I made an application for a Domestic Violence Order. I was given a Temporary Order on [DATE]
4. [Details of any previous Orders]

Background- my relationship with [RESPONDENT]

5. I commenced a relationship with Bobby [DATE]

Evidence

- Standard of evidence: (s145)
 - Court is not bound by the rules of evidence
 - May inform itself in any way it considers appropriate
 - Court must be satisfied of the matter on the balance of probabilities
- Witnesses – Would normally have seen, or heard the incidents that are being described. If witnesses swear an affidavit they must be prepared to come to court to give evidence
- Freedom of Information documents (medical records, police, child safety)
- Subpoea's – (e.g. police, child safety)
 - Request court to issue Subpoena (separate form to be completed)
 - Complete Subpoena form
 - Important to get Legal Advice before issuing Subpoena.

Protected witnesses (s150)

- Aggrieved, children and named persons are protected witnesses
- Court must consider special arrangements to give evidence eg in another room, video link, behind a screen
- If a child the court **must** consider **and** make special arrangements
- Self represented respondents **not** permitted to cross examine if protected person will be caused distress or intimidated
- Court can decide on its own or on application

Intervention orders

- The name of these Orders will change to simply ‘Intervention Orders’ (s69)
- The Court can make these orders with the agreement of the respondent that requires the respondent to attend an approved intervention program or counselling provided by an approved provider.
- The Court must consider non-compliance with intervention orders and may consider compliance with intervention orders when making a PO or varying a DVO but must not refuse to make or vary a DVO merely because the respondent has complied with an intervention order (ss37(2) and 37 (3)).

The making of an Intervention Order should not be considered a viable alternative to making a Protection Order.

Court Outcomes

- Order may be made – conditions may differ from what is originally sought
- Application may be dismissed without an Order being made
- Costs: - Each party to the proceeding bear their own costs, HOWEVER,
 - The court **may award costs** against a party who makes an application that the court **hears & decides** to dismiss on the grounds that the application is malicious, deliberately false, frivolous or vexatious.
- Not happy with the decision? – Obtain legal advice.
- Appeals – 28 days from the date the magistrate made the decision to lodge an appeal. The appeal is made to the District Court
- CARE!!!!!! Non Publication of Proceedings – A person is not allowed to publish any information in the proceedings that identifies parties, children or witnesses, involved in DV proceedings.. Only if court allows it...

Duration of orders

- A protection order will continue in force until the day specified in the order or, if no date is specified, the expiration of 5 years from the date the Order was made:
- The Court may order that a protection order continue in force for any period the Court considers **necessary or desirable** to protect the aggrieved from DV, but less than 5 years only if the Court is satisfied 'there are reasons for doing so' and must give reasons:
- In deciding the duration of the Order the primary consideration is that 'the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount': new s. 97(3).

Explanation of orders (ss84, 85)

- Court must ensure **both** parties understand the proceedings and consequences
- Court is required to explain Domestic Violence Orders to parties who attend Court including the type of behaviour that constitutes 'domestic violence' (new s84(3)(b))
- Directed to use interpreters where it is appropriate (better uptake by Court)
- Written explanation of the orders **must** be given to both parties



Domestic Violence & Tenancy

- The Magistrates Court can include conditions in the order that prohibit a party from remaining at, entering or even approaching a premises. (Ouster Orders).
- The court must consider whether to impose an ouster condition on the respondent in relation to the aggrieved's usual place of residence. (section 57).
- Principles for administering the DV Act, include disruption to the aggrieved's/named persons lives should be minimised (section 4(2)(a))
- If parties share a rental property, a tenancy matter can be heard by the magistrates court concurrent with the protection order application.
- Applicants need to complete a QCAT Form 2 (Minor Civil Dispute)

You've got an Order – Incidents continue.....

- Court would have explained the Order to both parties so they understand the Order
- Respondent can only be charged with breaching the order if:
 - They were in court when the order was made; or
 - They have been served with a copy of the order; or
 - A police officer has told them that the Order exists

Report Breaches to the police

- Write down details of incidents as they happen
- Keep evidence (sms, letter, photos, telephone messages, diary entries_
- Penalties for breaching orders include:-
 - Community service, good behaviour bonds, fines, prison

Variations (s91)

- A court may vary a Domestic Violence Order on an application made to the court or on the court's initiative
- Consider grounds of initial application, any findings of the court and compliance with a voluntary intervention order
- Court must consider past compliance or non compliance with intervention orders, without making compliance a reason not to vary an order.

Variations (s92)

- Court must consider whether safety, protection or wellbeing is affected e.g. reducing conditions
- Court must consider wishes of aggrieved, whether pressured, current contact between the parties and any other relevant matter
- The Act (s. 92 (2) (d)) requires that where a variation may adversely affect the safety, protection or wellbeing of an aggrieved or named person, the Court must consider –

“the principle that the safety, protection and well-being of people who experience domestic violence, including children, are paramount”.

Interface with Family Law Act

- The court must be informed of any family law order
- Priority is for safety of children and not consistency with Family Law Orders . Court specifically directed to consider their power under the Family Law Act to make, suspend or vary family law orders
- Court must not diminish the protection given by an Order for the purpose of facilitating consistency with a family law order
- If the Court is considering varying a family law order it must give the parties an opportunity to present evidence & make submissions (unless making temporary protection order)

Family Law & Domestic Violence

- Often Family violence victims have concurrent parenting issues to also deal with.
- FAMILY LAW ACT (s4AB) For the purposes of this Act, **family violence** means **violent, threatening or other behaviour by a person that coerces or controls a member of the person's family , or causes the family member to be fearful**
 - Examples include:
 - Assaults, sexual assault, stalking, repeated derogatory taunts, damaging of property, intentionally causing death or injury to animal, denying family member financial autonomy, with holding financial support unreasonably, etc....
- The aggrieved may need to consider making an urgent application to the court for parenting orders, location orders or recovery orders.

Summary – Key points to remember

- When drafting applications, stick to the facts, for each incident:
 - When did it happen?
 - What happened?
 - Where did it happen, what time? Who was there?
 - What was the outcome?
- Make the application easy for the Magistrate to read –
Pagination - number paragraphs/pages
- Keep your explanations brief and to the point

Questions ?

