

Legislation explained

Domestic and Family Violence Protection Act 2012



Translation and interpretation

If you need help because of domestic violence please call the Translating and Interpreting Service on **13 14 50** and ask them to transfer you to DVConnect on **1800 811 811** for help. If your life is in danger, call the Police on **000** (triple zero).

Amharic

በቤተሰብ ውስጥ ሰቢያ እርዳታ ከፈለጉ እባክዎ ለትርጉምና አስተርጓሚ እገልግሎት በስልክ **13 14 50** ይደውሉና እርዳታ ለማግኘት ወደ የቤተሰብ ውስጥ ማገናኛ/DVConnect በስልክ **1800 811 811** እንዲያስተላልፉዎት መጠየቅ ነው። ለሀይወትዎ የሚያስጋ ከሆነ በ **000** ለፖሊስ መደወል ነው።

Arabic

إذا كنت بحاجة للمساعدة بسبب العنف المنزلي، يرجى الاتصال بخدمة الترجمة التحريرية والشفوية على الرقم **13 14 50** وطلب توصيلك بـ DVConnect على الرقم **1800 811 811** للمساعدة. وإذا كانت حياتك معرضة للخطر، اتصل بالشرطة على الرقم **000**.

Bosnian

Ako vam je potrebna pomoć u vezi nasilja u porodici, molimo nazovite Službu za prevodjenje i tumačenje na **13 14 50** i zatražite da vas spoje sa DVConnect na **1800 811 811** za pomoć. Ako vam je život u opasnosti, nazovite policiju na **000**.

Croatian

Ako vam je potrebna pomoć zbog nasilja u obitelji, molimo vas nazovite Službu za prevodjenje i tumačenje (TIS) na tel. **13 14 50** i zatražite da vas spoje s DVConnect na broj **1800 811 811**. Ako vam je život u opasnosti, nazovite policiju na broj **000**.

Hindi

यदि घरेलू हिंसा के फलस्वरूप आपको सहायता की आवश्यकता हो तो कृपया अख्तियार एवं दुर्भाषिया सेवा (Translating and Interpreting Service) को **13 14 50** पर फोन करें और उनसे निवेदन करें कि सहायता के लिए वे आपको **1800 811 811** पर ट्रांसफर करें। यदि आपका जीवन खतरे में हो, तो पुलिस को **000** पर फोन करें।

Japanese

ドメスティックバイオレンスで援助を必要とする場合は、電話 **13 14 50** の翻訳・通訳サービスにお電話の上、援助を受けるために、電話 **1800 811 811** のDVConnect になくよう依頼して下さい。生命の危険がある場合は、電話 **000** で警察に電話をして下さい。

Kirundi

Niwaba ukeneye imfashanyo kubera ihohoterwa ryo muhira, urasabwe guhamagara Ishirahamwe riraba ivy'Ubusemuzi ku numero **13 14 50**, usabe ko baguhamagarira umushinga witwaga DVConnect ku numero **1800 811 811** kugira bagufashe. Ubonye amagara yawe ari mu mazi abira, ca uhamagara Polisi ku numero **000**.

Russian

Если вам нужна помощь в связи с насилием в семье, позвоните в Службу письменных и устных переводов (Translating and Interpreting Service) по номеру **13 14 50** и попросите, чтобы вас соединили со Службой DVConnect по номеру **1800 811 811**, и вам будет предоставлена помощь. Если вашей жизни угрожает опасность, позвоните в полицию по номеру **000**.

Samoan

Afai e te manaomia se fesoasoani ona o faasauaga i aiga faamolemole valaau i le Auaunaga o Faailiilupu ma Faamatalaupu i le **13 14 50** ma fesili i a latou e tu'u oe i le DVConnect i le **1800 811 811** (Fesootaiga i Faasauaga i Aiga) mo se fesoasoani. Afai ua lamatia lou ola, valaau Leoleo i le **000**.

Simplified Chinese

如果你因家庭暴力而需要帮助，请致电笔译和口译服务(电话：**13 14 50**)，请他们为你转接DVConnect电话**1800 811 811**求助。如果你面临生命危险，请拨打电话**000**报警。

Serbian

Уколико требате помоћ због насиља у породици, молимо вас назовите преводилачку службу на број **13 14 50** и затражите да вас споје са ДиВиКонект на **1800 811 811** да вам помогну. Ако вам је живот у опасности, назовите полицију на број **000**.

Spanish

Si necesita ayuda debido a violencia doméstica, sírvase llamar al Servicio de traducción e interpretación (Translating and Interpreting Service) al **13 14 50** y solicítele que le transfieran la llamada a DVConnect al número **1800 811 811** para obtener ayuda. Si su vida está en peligro, llame a la policía (Police) al **000**.

Swahili

Kama unahitaji usaidizi kwa sababu ya vurugu nyumbani tafadhali pigia Huduma ya Utafsiri na Ukalimani kwenye nambari ya simu **13 14 50** na uliza wakuelekeze kwa DVConnect kwenye nambari **1800 811 811** kwa usaidizi. Kama maisha yako yako hatarini, pigia Polisi simu kwenye **000**.

Tagalog

Kung kailangan mo ng tulong dahil sa karahasan sa tahanan, pakitawagan ang Serbisyo ng Tagasalinwika sa **13 14 50** at hilingin sa kanilang ilipat ang tawag mo sa DVConnect sa **1800 811 811** para matulungan. Kung nanganganib ang iyong buhay, tawagan ang Pulisya sa **000**.

Thai

หากท่านต้องการความช่วยเหลืออันเนื่องมาจากการใช้กำลังรุนแรงในครอบครัว โปรดโทรศัพท์ไปที่บริการแปลและคำม **13 14 50** แล้วขอให้เขาต่อสายไปที่ DVConnect **1800 811 811** เพื่อขอความช่วยเหลือ หากชีวิตของท่านตกอยู่ในอันตราย โปรดโทรศัพท์แจ้งตำรวจ **000**

Tigrinya

ብምክንያት ከቤታዎ ግመዳ ኣገዛዝ እንተደለኹም በኛኹም ብቐጽረ ስልክ **13 14 50** ናብ ትርጉምን አስተርጓሚይ ገልጋሎት (Translating and Interpreting Service) ብምድቃል ናብ ከቤታዎ ግመዳ/DVConnect ብቐጽረ ስልክ **1800 811 811** ኣራኹቲኡ ኢልኹም ግርግርግጦ። ህይወትኩም ኣብ ኣደጋ እንተ'ልዩ ድማ ናብ **000** ብምድቃል ፖሊስ ጸውዑ።

Vietnamese

Nếu quý vị cần trợ giúp vì bị bạo hành trong gia đình, vui lòng gọi Dịch vụ Thông Phiên dịch theo số **13 14 50** và xin chuyển máy đến DVConnect theo số **1800 811 811** để được trợ giúp. Nếu quý vị bị nguy hiểm đến tính mạng, gọi Cảnh sát theo số **000**.

About this booklet

The Department of Communities, Child Safety and Disability Services provides and funds a range of initiatives to support people affected by domestic and family violence, including court support, specialist counselling for adults and children, and a state-wide telephone helpline.

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

The purpose of this booklet is to:

- explain the *Domestic and Family Violence Protection Act 2012*, and
- provide information about seeking protection by applying for a protection order using this Act.

To order additional copies of this booklet email

Violence_Prevention_Team@communities.qld.gov.au

For further information please visit **www.qld.gov.au**

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The legislation

The *Domestic and Family Violence Protection Act 2012* (the Act) recognises that freedom from domestic and family violence is a human right and that people subjected or exposed to domestic and family violence can experience physical, emotional and psychological harm.

The Act states that the protection and safety of individuals who are experiencing or who fear domestic or family violence, including children, is paramount. The Act aims to protect people from domestic and family violence and ensure that those who are affected are treated with respect and that practical consideration is given to minimising disruption to their lives.

The Act aims to hold people who commit domestic and family violence accountable for their actions. This is achieved by a court being able to make a domestic violence order that restricts the behaviour of the person committing the violence and in some instances identifying the behaviour as a criminal offence.

The Act gives police immediate powers to respond to domestic and family violence incidents, including the power to issue a police protection notice.

Breaching a domestic violence order or a police protection notice is a criminal offence with serious consequences.

Information contained in this brochure should only be used as a guide. Legal advice should be sought from a solicitor.

Copies of the Act can be obtained by visiting www.legislation.qld.gov.au

The Rules

The *Domestic and Family Violence Protection Rules 2014* (the Rules) apply to court proceedings (except appeals) under the Act. The Rules are intended to guide how a court conducts proceedings so they are consistent with the main objects of the Act, just and avoid undue delay, expense and technicality.

The Rules contain information about:

- filing documents, including an application for a protection order
- notifying the court of a change of address for service

- being given notice of proceedings
- serving documents and proof of service
- directions that may be issued by a court
- matters that are relevant to making an order or issuing directions
- litigation guardians
- evidence
- affidavits
- subpoenas
- accessing documents
- return of exhibits
- withdrawing an application for a protection order
- costs.

Copies of the Rules can be obtained by visiting
www.legislation.qld.gov.au

What is domestic and family violence?

The Act states that domestic and family violence is abusive or violent behaviour used by one person to control or dominate another person within a relevant relationship.

Behaviour that constitutes domestic and family violence includes:

- physical or sexual abuse (e.g. unwanted sexual contact, hitting or pushing)
- emotional or psychological abuse (e.g. belittling, making comments to make a person feel bad about themselves)
- economic abuse (e.g. limiting a person's access to money or unreasonably making them account for every cent)
- threatening behaviour (e.g. forcing a person to behave in a certain way by threatening to hurt a child or pet or someone else)
- coercive behaviour (e.g. behaviours such as stalking, threats, or other intimidation to force a person to change their mind about something, or to act in a certain way)
- behaviour that in any way controls or dominates or causes a person to fear for their personal safety or wellbeing.

Domestic and family violence includes:

- threats of injury or death to an individual, their child or another person or something of importance to the individual, such as a pet
- stalking, including constant unwanted monitoring of a person's activities
- causing damage to a person's property
- threats by the perpetrator of self-harm or suicide as a means of tormenting or intimidating a person.

When a person asks someone else to engage in abusive or violent behaviour towards an individual with whom they have a relationship, or had a relationship, this too is considered domestic violence.

Domestic and family violence often involves an ongoing pattern of violence or abuse over time, resulting in an individual living in fear of another individual. Sometimes people use the term 'walking on eggshells' to describe how they feel.

If this is happening to you or someone you know, you can call one of the numbers in the back of this booklet for confidential help and information.

What is a 'relevant' relationship under the Act?

Protection under the Act is available to a person in a *relevant relationship* and is defined as:

- an intimate personal relationship;
- a family relationship; or
- an informal care relationship.

Intimate personal relationships include couples, people who are engaged, in a de facto relationship or who are married. They include people who are separated or divorced, who have a child together, and people who are living together or have previously lived together as a couple. People who are or were engaged to be married including a betrothal under cultural or religious tradition are also covered.

It can include people who haven't lived together in some circumstances, including people under the age of 18.

A court will consider each relationship on a case-by-case basis to see if an intimate personal relationship exists. To assist the court to decide if such a relationship exists, it may look at how long the couple have been together, how often the couple see each other or how dependent on or committed the couple are to each other.

Family relationships exist between two people who are related by either blood or marriage, including a spouse, a child, a parent, a sibling, a grandparent, an aunt or uncle, a cousin, a step-relative, half-relatives and in-laws. Children under the age of 18 cannot access protection, in their own right, in the context of a family relationship. The *Child Protection Act 1999* sets out the relevant law for the protection of children within families.

For some people, such as Aboriginal and Torres Strait Islanders, a wider group of people may be considered as family and may be recognised under the Act.

Informal care relationships exist where one person is dependent on another person for help in their daily lives, such as assistance with dressing or grooming, meal preparation, grocery shopping or arranging medical care. This does not include help provided by a paid person but where the care is provided without payment. A person receiving a carer payment from the government is not a paid carer and can be part of an informal care relationship.

Who is the ‘aggrieved’ and who is the ‘respondent’?

The **aggrieved** is the victim of the domestic or family violence or the person that a domestic violence order or police protection notice is made to protect.

The **respondent** is the perpetrator of the domestic or family violence or the person the domestic violence order or police protection notice is made against.

What is a domestic violence order?

A domestic violence order is an order made by a court with conditions that aim to stop the behaviour of the perpetrator to prevent further domestic or family violence from occurring.

A domestic violence order can be either a:

- protection order (the order made by a court when a final decision is made in relation to an application)
- temporary protection order (an order made by a court before a final decision is made about whether a protection order should be put in place).

A Magistrate can make a domestic violence order if they believe it will protect someone from domestic or family violence. The Act allows a Magistrate to make a protection order if they are satisfied that:

- domestic or family violence has occurred
- a relevant relationship as defined under the Act exists
- an order is necessary or desirable to protect an individual from domestic or family violence.

A Judge in the Supreme or District Court may also make a domestic violence order when the court convicts a person (the offender) of a criminal offence involving domestic or family violence.

A domestic violence order may also be made in the Childrens Court during a child protection proceeding.

What if urgent protection is needed?

If you are in danger and need protection urgently you should contact the police by calling triple zero (000).

If you are deaf or have a speech or hearing impairment call the Text Emergency Call 106 by using a teletypewriter.

How can the police help?

Police have many powers under the Act to protect you. One of those powers is the ability to issue a police protection notice which gives immediate protection to someone affected by domestic or family violence. This is to ensure the protection of an individual without relying on the immediate availability of a Magistrates Court to hear an application for a protection order.

What is a police protection notice?

When police are called to a place where domestic or family violence is occurring, or is thought to have occurred, they can immediately issue a police protection notice against the respondent. A police protection notice is a short-term notice that requires the respondent to be of good behaviour and not commit domestic or family violence against the aggrieved. It may also include other tailored conditions to protect the aggrieved, their child or other relative or associate. The notice is in effect for a short period of time until the application for a protection order can be heard by a Magistrate. In most cases this will be within five business days, however in more remote areas, it will depend on when a Magistrate is available.

Police may issue a police protection notice if they are present at the same location as, or have made a reasonable attempt to locate and talk to, the person accused of committing domestic or family violence and they reasonably believe that:

- the respondent has committed domestic violence
- no domestic violence order or police protection notice has previously been made in relation to the respondent and the aggrieved
- a police protection notice is necessary or desirable to protect the person impacted by the violence
- the respondent should not be taken into custody.

A breach of a police protection notice is a criminal offence which can result in up to three years imprisonment or a fine of 120 penalty units.

What other powers do the police have?

Police can direct a respondent to move to and/or remain at a particular place (for a maximum of two hours) to enable the respondent to be served with an application for a protection order or a domestic violence order or issued or served with a police protection notice. It is an offence not to comply with this direction.

The police have the power to investigate suspected domestic and family violence and officers are required to record their reasons if no further action is taken after an investigation.

Police can:

- apply for a protection order or urgent temporary protection order on behalf of an aggrieved
- investigate potential breaches where a domestic violence order is already in force and charge a person with a criminal offence if there is evidence that a breach of the domestic violence order has occurred
- where the perpetrator presents a danger of personal injury or property damage, take them into custody for a maximum period of four hours (or a maximum period of eight hours if the person is intoxicated or a Magistrate approves an extension to the detention period)
- enter and search premises without a warrant if they suspect domestic or family violence has occurred or there is a risk of it occurring
- charge the perpetrator with a criminal offence.

Who can apply for a protection order?

An application for a protection order may be made by:

- the person affected by the domestic or family violence (the 'aggrieved')
- an authorised person for the aggrieved (this can include a friend, relative or a worker at a domestic violence service)
- a police officer
- a person acting under another Act, such as a guardian for a personal matter of the aggrieved, or an attorney for a personal matter under an enduring power of attorney
- a party to a child protection proceeding in the Children's Court.

Who can be protected by a domestic violence order?

A domestic violence order can protect the aggrieved, as well as a child of the aggrieved, a child who usually lives with the aggrieved, a relative or an associate of the aggrieved (such as a friend or work colleague).

Exposure to domestic and family violence can have a significant adverse impact on children. The Act aims to prevent children from witnessing and experiencing the effects of domestic and family violence.

Being named on the order provides the relatives, associates or children of the aggrieved with the same standard of protection as granted to the aggrieved. Respondents are required to be of good behaviour towards the named person/s and not commit an act of associated domestic violence against the named person/s. The respondent must also comply with any other condition on the order.

If the named person is a child, the respondent must be of good behaviour towards the child, not commit associated domestic violence against the child, and not expose the child to domestic violence. The Act describes the kinds of things that are considered to be exposing a child to domestic violence and includes overhearing threats, experiencing financial stress arising from economic abuse, cleaning up a site after property has been damaged or comforting or providing assistance to a person who has been physically abused.

If the court becomes aware of the existence of a child of the aggrieved, or a child that normally lives with the aggrieved, the court must consider whether the child should be named in the domestic violence order, regardless of whether the application for the order names the child.

The applicant for a protection order must tell the court of any existing family law orders or family law order applications. The court is then required to consider any existing family law order it is aware of and whether that order needs to be revived, varied, suspended or discharged if it is inconsistent with the protection needed by the aggrieved.

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

Children and young people under 18 years old and experiencing domestic and family violence can apply for a protection order in certain circumstances. They can be named as the aggrieved or respondent in a domestic violence order or a police protection notice if an intimate personal relationship or an informal care relationship (but not a family relationship) exists between the child and the other party named in the application.

Where a child is a party to an application, the Act provides some specific safeguards. For example, it allows the court to adjourn or delay a protection order application hearing if the child or young person has not had a reasonable opportunity to obtain legal representation. The Act also states that if a document must be given, or served to a child, the person responsible for doing so must also give a copy of the document to the child's parents (unless special circumstances prevent this) and generally must not provide the document to the child in the vicinity of the child's school.

Children and young people under 18 years of age cannot apply for a protection order against their parents or other family members, as this is considered a child protection issue and should be dealt with under the *Child Protection Act 1999*. For more information about child protection issues, contact Child Safety:

Phone: 1800 811 810 .

Web: www.communities.qld.gov.au/childsafety (search for 'Regional Intake Services')

Parents cannot apply for protection orders against their children who are under 18 years old. However, if the child is 18 years or older, the parents may apply for a protection order.

How long do domestic violence orders last? What conditions are included in the order?

A temporary protection order remains in place until a court hears and decides the application for the related (final) protection order, or that application is withdrawn.

A protection order can last for any period the court considers appropriate to protect the aggrieved person and any other person named on the order. However, this period may only be for less than five years if the court is satisfied that there are reasons for a shorter duration.

If the court does not specify a duration for the order, the order will remain in place for five years from the date it is made.

All domestic violence orders must include conditions that state:

- the respondent must be of good behaviour towards the aggrieved and any named person and must not commit domestic violence or associated domestic violence
- if a child is a named person, the respondent must not expose the child to domestic violence.

The court must also consider imposing extra conditions to help protect the aggrieved, their relatives, associates and children from further domestic and family violence.

These conditions may include preventing the respondent from:

- approaching or attempting to approach the aggrieved or a named person, including stating a minimum distance for the respondent to stay from the aggrieved or a named person
- contacting (for example, by telephone, text message, email or social media) or attempting to contact, or asking someone else to contact, the aggrieved or a named person
- locating or attempting to locate the aggrieved or a named person
- engaging in other behaviour towards a child of the aggrieved, such as going to a child's school or day care centre.

The court may also:

- order the respondent to return property belonging to the aggrieved
- allow the aggrieved to retrieve property, including returning to a former home
- prevent or limit contact between the respondent and a child of the respondent to the extent necessary for the child's safety and wellbeing
- impose conditions for the protection of an unborn child where the aggrieved is pregnant at the time of the domestic violence order
- provide a time for police to accompany the respondent to the residence to recover personal property.

Ouster conditions

The court may impose an ouster condition prohibiting the respondent from remaining at, or entering particular premises, or approaching within a certain distance of the premises. This can be the home of the aggrieved, or where the aggrieved, or a named person, lives, works or frequently goes.

The Act requires a court making a domestic violence order to always consider whether to impose an ouster condition to the aggrieved's usual place of residence. Before deciding whether to include such a condition in an order, the court must consider a range of factors, including, for example:

- whether the aggrieved and any child living with them can continue to live safely in the residence if the ouster condition is not made
- any views or wishes expressed by the aggrieved about imposing the condition
- the need to ensure continuity and stability in the care of any child living with the aggrieved
- particular accommodation needs of the aggrieved, any affected child or the respondent.

Ouster conditions can be made regardless of whether the respondent has a legal or equitable interest in the premises (that is, owns or rents the premises) or where the aggrieved and respondent live, or lived, together in the premises.

The respondent may be allowed to return to the premises to recover certain personal property stated in a return condition made with the ouster condition. A police officer may be required to supervise the ouster or return conditions. If the respondent does not comply with the conditions, they are considered to be in breach of the domestic violence order which is a criminal offence.

For more information about circumstances that involve a rental or an owned property refer to pages 23 and 24.

Intervention orders

The Act aims to hold respondents accountable for their behaviour. In order to help respondents change their behaviour and increase the protection of the aggrieved, the court may make an intervention order.

An intervention order requires the respondent to attend an approved intervention program and/or counselling. The respondent is asked by the court to agree to the order and comply with it, and the consequences of not complying must be explained to the respondent. If the respondent fails to comply with an intervention order, the provider will give both the court and the police commissioner information about the contravention. The court must consider information about a respondent's failure to complete a program or counselling under an intervention order when making or varying domestic violence orders in the future. The court may also consider a respondent's compliance with an intervention order when making or varying a domestic violence order but must not refuse to make an order or decide to vary an order merely because of this compliance.

After the court makes an intervention order, the respondent will be assessed by the provider to determine their suitability to participate in a program or counselling. The assessment takes into account the respondent's character, personal history, language, as well as any disabilities, psychiatric or psychological conditions, alcohol or drug problems and the respondent's location (to ensure the program or counselling is reasonably convenient to the respondent, having regard to where the respondent lives or works).

Weapons

Under the *Weapons Act 1990*, a person may not hold a weapons license if a protection order has been made against them in the last five years. When a temporary protection order, police protection notice or release conditions are issued against a respondent, any weapons license is suspended for the duration of the order, notice or conditions. The *Domestic and Family Violence Protection Act 2012* allows the court to impose a condition prohibiting access to other items that have been used or threatened to be used as a weapon in a domestic violence incident, even where the item is not ordinarily a weapon for the purposes of the Weapons Act. The order may inform respondents that their licenses have been revoked and provide information about the surrender of their weapons and weapon licenses.

Making an application for a domestic violence order

Applications for a protection orders are made in your local Magistrates Court. There is a form that the applicant needs to complete explaining the reasons why they need protection from domestic violence. An application can be made by the aggrieved, a police officer, or another person who the aggrieved asks to act on their behalf.

The application form can be accessed on the courts website: www.courts.qld.gov.au/forms. The form is also available from domestic violence services or at your local courthouse.

The applicant needs to fill in the form and lodge it at their local courthouse. It is important to fill in this form correctly and with as much information as possible. The information on the form will assist the Magistrate who hears the application.

The law requires the police to serve a copy of the application on the respondent. If the aggrieved, or an approved person makes an application to the court, the clerk of the court will give a copy of the application to the officer in charge of the local police station. The police will then make sure that the respondent is served with a copy of the application.

An individual can request that the application be heard before the respondent is served with the application so that a temporary protection order may be made. It will depend on the availability of the Magistrates Court as to when the application can be heard urgently. You must state clearly in your application the reasons why it is necessary or desirable for you to be protected by a temporary protection order before the respondent is served with a copy of the application.

The mention

When the applicant lodges the form at the courthouse, they will be given a first court date this court date is called the mention.

If the two parties 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 protection order in their absence. This can only happen if the police have served the respondent with the application.

If the respondent is not present and has not been served with a copy of the application, 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 protection 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 issue and not a criminal issue, 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'. However, a respondent who is convicted of breaching an order (disobeying the order) commits a criminal offence under the Act.

At the hearing an applicant may be represented by a police prosecutor, legal aid solicitor, private solicitor or themselves.

Legal representation

You do not need to have a lawyer to attend court. It may be useful for you to get some legal advice to help you understand the court process and help you identify the information the court needs to make a decision. Telephone numbers for legal services are at the back of this booklet.

What kind of information does the court need?

To decide whether to make a protection order the court needs to know the following information which should be clearly stated in the application:

1. A relevant relationship exists between the aggrieved and the respondent. A relevant relationship is an intimate personal relationship, or a family relationship or an informal care relationship. Further information about these relationships is contained in the section of this booklet called 'What is a relevant relationship under the Act'. (refer to page 7)

2. The respondent has committed domestic or family violence against the aggrieved. This means that the respondent has done one or more of the things identified in the Act as domestic or family violence. Information about the behaviours that constitute domestic and family violence are listed in the section of this booklet called 'What is domestic and family violence'. (refer to page 6)
3. *A protection order is necessary or desirable to protect the aggrieved from domestic violence.* The Act provides guidelines for the court in making this decision, including the court's consideration of the principle that the safety, protection and wellbeing of people who fear or experience domestic violence are paramount.

To show the court that these three conditions exist, the applicant needs to give the court information about things they have experienced. If they can remember dates and times, that is helpful for the court. The applicant also needs to tell the court if they are fearful of the perpetrator and what it is that makes them fearful. It is important to be as specific as possible.

In some courthouses, there are court support workers who can help the applicant with their application.

Giving evidence in court

The court receives evidence in a number of different ways. The court may receive written evidence, such as the application or affidavits prepared by other witnesses. The court can also receive oral evidence from people who personally attend and speak in court.

The law provides a number of protections for witnesses. It is usual for people to be worried about giving evidence in court. For people who have experienced domestic or family violence, this can be made worse by the fear of being in the same room with, or potentially questioned by the respondent who has perpetrated violence against them. The court must consider putting in place special arrangements when the aggrieved, child or another person who can be protected by a domestic violence order is giving evidence. These measures are meant to reduce the stress or trauma that the witness might otherwise experience.

The safeguards the court might use include:

- giving evidence from another location by a video-link
- a screen or one-way glass being placed so the witness cannot see the respondent while giving evidence
- a person approved by the court providing emotional support to the witness in the courtroom, or
- if the witness has a physical or mental disability, ensuring they can give evidence in a way that will minimise the witness' distress.

The court has the ability to make any other arrangements it considers appropriate.

Who can be cross-examined?

If an aggrieved or named person is giving evidence, the court may order that the respondent may not cross-examine them in person if it is likely to cause the witness to suffer emotional harm or distress or be so intimidated as to be disadvantaged as a witness.

A respondent cannot cross-examine a child. These rules only apply where a respondent does not have a lawyer and is conducting their own case.

In these circumstances, the court will ask the respondent to advise when they have arranged for a lawyer to act for them or if they instead decide not to cross-examine the witness. A lawyer for the respondent can cross-examine the aggrieved, a child or a named person.

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

Because of the sensitive nature of domestic and family violence and the involvement of children in some cases, proceedings are conducted in a closed court and there are restrictions on publishing information about cases to the public. Members of the public are not allowed inside the court during hearings for domestic violence orders.

The applicant for a protection 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, for instance, in newspapers, magazines or on the internet, or broadcast on the radio or television, or by any other means that releases information to the general public.

Given the nature of court proceedings, courts are generally not considered appropriate places for children. Parties should ensure they have appropriate care for children during court hearings. The staff in the court registry will not be able to look after children while their carers are in court.

What happens when the domestic violence order is made?

The respondent must be given a copy of the order. The police will serve the respondent with a copy of the order if the respondent was not present in court when the order was made. The aggrieved will also be provided with a copy of the order if they are present in court. If the aggrieved is not present, a copy of the order will be posted to their last known address.

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.

What happens if the respondent breaches the domestic violence order?

If a respondent is aware of the domestic violence order and disobeys the order, he/she may be charged with breaching the domestic violence order, which is a criminal offence.

The maximum penalty is three years imprisonment or 120 penalty units. If the respondent has previously breached an order or has been convicted of a domestic violence offence within the preceding five years the maximum penalty is 240 penalty units or five years imprisonment.

How can a domestic violence order be changed?

An application to vary an order can be made by the aggrieved, the respondent, a named person, authorised person, person acting under another Act, or a police officer.

The application needs to be filed in the court. Variations to the order may be related to conditions, duration or named persons in the order.

The Magistrate must be convinced that the aggrieved is not being pressured or threatened by the respondent before the Magistrate can vary (change) a domestic violence order. The court needs to consider whether the safety or wellbeing of the aggrieved would be adversely affected by the variation of the order. The aggrieved and the respondent will be provided with a copy of the varied domestic violence order.

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

If an aggrieved or respondent does not agree with the Magistrate's decision to make, vary, refuse to make or refuse to vary a domestic violence order, they may appeal to the District Court. If the person seeking to appeal the magistrate's decision was in court, they have 28 days from the decision date to file their appeal. If the person was not in court when the original decision was made, they have 28 days from the day on which the decision is served on them or a police officer tells them about the decision — whichever day comes first.

An appeal is started by filing a Notice of Appeal in the District Court (Form 96). This form is available on the courts website at www.courts.qld.gov.au/forms. The person starting the appeal proceedings (called the appellant) must pay a filing fee under the *Uniform Civil Procedure (Fees) Regulation 2009* – Schedule 1, Item 1(5).

Is an interstate or New Zealand domestic violence order recognised in Queensland?

From 25 November 2017, a new scheme called the National Domestic Violence Order Scheme (NDVOS) will commence nationally. Under the NDVOS, any Australian domestic violence order made on or after 25 November 2017 (in a participating jurisdiction) will automatically be recognised and enforceable in any Australian state or territory as soon as it is made and served on the respondent.

This applies to both temporary and final court-issued domestic violence orders, as well as orders and notices issued by police officers.

Also, any restrictions included in an interstate order (for example, disqualification from holding a weapons license) will be recognised in Queensland and other jurisdictions.

This means that an aggrieved who moves interstate will no longer have to manually register their order.

However, Queensland or interstate orders made prior to 25 November 2017 will not be automatically recognised or enforceable, across borders, under the NDVOS. While existing orders will continue to apply within the state they were made (or manually registered in), if the aggrieved wishes to move interstate, they will need to apply to a court to have the order declared for it to be enforceable there.

Domestic violence orders made in New Zealand are not covered by the NDVOS. Therefore, an order made in New Zealand will still need to be manually registered in Queensland (or another state) but once registered it will be enforceable in all Australian jurisdictions.

To register an order in Queensland, you must file an application form (www.courts.qld.gov.au/forms) in any Queensland Magistrates Court. It does not cost anything to register an order. If no change to the order is needed, the order will be registered by the clerk in the registry and you do not need to go to a court hearing. If you require the order to be changed, the application will be listed for court and you will receive a court appearance date.

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 seek an order about the rented premises. For example, if an ouster condition is imposed on a respondent who is listed as a tenant on a rental agreement, the aggrieved may be able to apply for an order under the *Residential Tenancies and Rooming Accommodation Act 2008* to be recognised as the tenant instead of the respondent, or for an order terminating the tenancy.

A tenancy matter can be heard by the Magistrates Court at the same time as the court hears an application for a domestic violence order. A respondent or aggrieved can also have a tenancy matter decided separately by the Queensland Civil and Administrative Tribunal (QCAT).

The Magistrate or QCAT can make orders including:

- inserting the name of the aggrieved on the tenancy agreement as the tenant (even if it was not originally on there)
- removing the respondent's or aggrieved person's name from the tenancy agreement
- restraining the person who committed an act of domestic or family violence from causing further damage or injury, or
- ending the tenancy agreement.

To get an order about a tenancy agreement, the aggrieved needs to complete a separate application form (Form 2 – Application for minor civil dispute — residential tenancy dispute). This form is available at www.qcat.qld.gov.au and can be lodged at the Magistrates Court at the same time as the application for the domestic violence order.

For more information contact the Residential Tenancies Authority on 1300 366 311 or visit <https://www.rta.qld.gov.au/Renting/During-a-tenancy/Serious-problems-during-a-tenancy/Domestic-violence-in-the-rental-property>

What if the aggrieved and respondent own a property together?

A court can impose an ouster condition to stop the respondent from entering or living at a place, even if both parties jointly own the property. However, the distribution of property at the end of a relationship is a complex matter. The aggrieved and respondent should seek legal advice if they own a property together and do not want to continue the relationship.

General information about property settlements is available on the Legal Aid Queensland website at www.legalaid.qld.gov.au/

Helpful services

A range of legal and community agencies in Queensland offer services that provide information, referral, counselling and support for people affected by domestic and family violence. A list of agencies and respective phone numbers is provided on the following page. Those people wishing to learn more could also consult their local telephone book or search online for services located in their region.

Remember, do not let anyone's life be placed in danger, especially your own. In an emergency, call the police on 000 (triple zero) or ask someone else to contact them for you.

Legal Services

Adult Guardian

Brisbane (07) 3234 0870
Regional 1300 653 187
(assists adults who are unable to make decisions for themselves due to illness, injury or disability)

Caxton Legal Service / Seniors

Advocacy Information and Legal Service (07) 3214 6333

Child Safety After Hours 1800 177 135
(24 hours, for concerns about children)

Legal Aid Queensland 1300 651 188
Violence Prevention and Women's Advocacy
Legal Service (07) 3238 3425

Public Trustee (07) 3213 9288
..... 1300 651 591

Residential Tenancies

Authority 1300 366 311

Women's Legal Service

Brisbane (07) 3392 0644
Regional 1800 677 278

Domestic and Family Violence Support Services

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

Brisbane North (07) 3217 2544
Brisbane South (07) 3217 2544
South West Brisbane (07) 3217 2544
Bundaberg (07) 4153 6820
Caboolture (07) 5498 9533
Cairns (07) 4033 6100
Emerald 1300 523 985
Fraser Coast (07) 4194 0172
Gladstone (07) 4979 1456
Gold Coast (07) 5532 9000
Ipswich (07) 3816 3000
Ipswich Rural free call 1800 026 262
Logan City (07) 3808 5566
Mackay (07) 4957 3888
Redlands (07) 3808 5566
Rockhampton (07) 4926 9726
Roma 1300 477 433
Sunshine Coast (07) 5430 9300
Toowoomba (07) 4617 7670
Townsville (07) 4721 2888

DVConnect Womensline 1800 811 811
(24 hours a day, 7 days a week)

Womensline provides counselling, referral and assistance to access refuge accommodation for women experiencing domestic and family violence.

DVConnect Mensline 1800 600 636
(9am to midnight, 7 days a week)
Mensline provides counselling, information and referral to men affected by domestic and family violence.

Other Community Support Services

Immigrant Women's Support Service (IWSS)

Brisbane (07) 3846 3490
IWSS provides culturally appropriate support, information and referral for women and children of non-English speaking backgrounds, who are experiencing domestic violence.

Disability Information and Awareness Line (DIAL)

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

Elder Abuse Prevention Unit Helpline

..... 1300 651 192
(Monday to Friday, 9am to 5pm)

Kids Helpline 1800 55 1800
(for young people up to age 25)

Lifeline 13 11 14
24 hour Crisis Counselling Line

Statewide Sexual Assault Helpline

..... 1800 010 120
(7.30am to 11.30pm 7 days a week)

1800 RESPECT

National 1800 737 732
National sexual assault, domestic family violence counselling service

Seniors Enquiry Line 1300 135 500
(Monday to Friday, 9am to 5pm)

TTY users phone 133 677 then ask for
1300 135 500

National Relay Service

If you are deaf, or have a hearing impairment or speech impairment, contact the National Relay Service:
TTY users phone TTY/voice calls....133 677
Speak and Listen users phone 1300 555 727
SMS relay service text 0423 677 767

Translator Interpreter Service National

If you require an interpreter, TIS National can provide an interpreter immediately over the phone. Call 131 450.

Further information

For more information about domestic and family violence prevention see:

1. *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.
2. *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 order additional copies of this booklet email

Violence_Prevention_Team@communities.qld.gov.au

For further information about domestic and family violence, please visit **www.qld.gov.au/domesticviolence** or call

13 QGOV (13 74 68)

To view the *Domestic and Family Violence Protection Act 2012* please visit:

www.legislation.qld.gov.au