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Domestic Violence

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Introduction

If you or someone you know is experiencing domestic and family violence, there are many ways to respond and be protected legally, and non-legally through assistance from a domestic violence service.

The *Domestic and Family Violence Protection Act 2012* (Qld) (DFVP Act) is a way of obtaining a domestic violence protection order, which is an order of a court telling a person using violence to behave or not behave in certain ways. If the person using violence breaches or does not follow the order, then they can be charged by police and dealt with in a criminal court. This option is a popular way to respond to domestic and family violence in Queensland. There are also other criminal responses to domestic and family violence (see Criminal Law Options below).

What is Domestic and Family Violence?

Domestic and family violence (DFV) is a pattern of behaviours intended to control, establish power or cause fear by one person against another. This behaviour and control can manifest in a number of ways. It can be physical or non-physical, and the behaviour is aimed to set up a devastating power imbalance. Even when there has been no physical assault, DFV is dangerous and frightening. There is always a risk that the violence will escalate. Domestic and family violence does not end on separation of a couple—in fact there may be an increased risk at this time.

Coercive control is a term used to describe a pattern of behaviours aimed at dominating and controlling another (usually an intimate partner, but it can be other family members) and is almost exclusively perpetrated by men against women (see ANROWS policy brief *Defining and Responding to Coercive Control*). It is not necessarily physical violence but it is aimed at limiting the autonomy, liberty and equality of the victim or survivor, which makes it particularly dangerous and subtle.

With coercive control, a perpetrator uses non-physical tactics (and sometimes physical tactics) to make the victim inferior and maintain their dominance and control over every aspect of the victim's life. The attack on the other person's autonomy can involve strategies such as:

- physical, sexual, verbal and/or emotional abuse
- psychologically controlling acts
- depriving the woman of resources and other forms of financial abuse

- social isolation
- using systems (e.g. the legal system) to harm the woman
- stalking
- deprivation of liberty
- intimidation
- technology-facilitated abuse
- harassment.

How to Use the Domestic and Family Violence Protection Act

Some terms in the DFVP Act

- A person applying for an order is the 'aggrieved'.
- A person responding to an order is the 'respondent'.

A 'domestic violence order' is the name given to the official order or piece of paper issued by the court that sets out what the respondent can or cannot do.

Examples of domestic and family violence

The DFVP Act provides a non-exhaustive list of examples of behaviour of DFV (s 8(2) DFVP Act):

- causing personal injury to a person or threatening to do so
- coercing a person to engage in sexual activity or attempting to do so
- damaging a person's property or threatening to do so
- depriving a person of the person's liberty or threatening to do so
- threatening a person with death or injury of the person, a child of the person or someone else
- threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person at whom the behaviour is directed
- causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person at whom the behaviour is directed, so as to control, dominate or coerce the person

- following (surveillance) of a person without their consent
- unlawfully stalking a person.

Also, the DFVP Act says that if someone encourages another person to engage in behaviour that would constitute DFV on the first person's behalf, then the first person will be taken to have committed DFV (s 8 DFVP Act).

Domestic Violence Order

A domestic violence order is made by the court to stop threats or acts of DFV against a person.

This order can stop someone from:

- approaching another person at their home or workplace
- staying in a home they used to share with the other person
- approaching another person, their relatives or their friends, if named in the order, within a certain distance (e.g. 100 metres)
- going to a child's school or day care centre.

An application must be in the official form and is usually filed in a Magistrates Court (ss 32-33 DFVP Act). The application for a domestic violence order (Form DV1) can be obtained from the local Magistrates Court, police station or online from the Queensland Courts website (see www.courts.qld.gov.au/going-to-court/domestic-violence).

There is no filing fee. Once the application is filed, a date for the hearing of the application will be fixed, and the court will provide the application to police to serve on the respondent (ss 33-34 DFVP Act).

Who can apply?

People who can apply for the order include:

- the aggrieved
- a person who is authorised by the aggrieved in writing to apply for an order (e.g. a refuge or domestic violence service worker)
- a police officer
- a person acting on behalf of the aggrieved (the DFVP Act gives the example of a guardian for a personal matter of the aggrieved under the *Guardianship and*

Administration Act 2000 (Qld), or an attorney under an enduring power of attorney under the *Powers of Attorney Act 1998* (Qld)).

How to get a domestic violence order

To be able to obtain a domestic violence order, you need to show that:

- you are in a 'relevant' relationship covered by the DFVP Act
- you have experienced domestic violence by the respondent (see definition above)
- the protection order is necessary or desirable to protect you from domestic violence (s 37 DFVP Act).

Relationships covered by the DFVP Act

Three types of relationship are covered by the DFVP Act:

- an intimate, personal relationship (a current or former spouse, a parent of a child together, an engaged couple or a 'couple' relationship) (s 18 DFVP Act)
- a family relationship
- an informal care relationship.

Intimate personal relationships

An intimate personal relationship includes couples who:

- are married
- are separated or divorced
- have a child together
- are living together or who have lived together (ss 14, 15,17, 18 DFVP Act).

The court considers each relationship on a case-by-case basis and, in some circumstances, it can include couples who have not lived together (e.g. couples who have formed an online or distance relationships and have daily contact with each other via social media and/or telephone).

Family relationships

A family relationship exists where the aggrieved is related to the respondent by blood or by marriage (s 19 DFVP Act). Examples of family relationships include:

- a spouse
- a child

- a parent
- a sibling
- a grandparent
- an aunt or uncle
- a nephew
- a cousin
- a half-brother
- a mother-in-law.

The DFVP Act also accepts that some people have a wider concept of 'relative' such as Aboriginal and Torres Strait Islander peoples and members of some non-English speaking backgrounds.

Informal care relationship

An informal care relationship exists where one person is dependent on the other person (a carer) for help in aspects of their daily living such as shopping, cooking, dressing, showering or arranging medical appointments. It is not applicable when the carer is paid by the person, however, a person receiving a carer payment from the government can be part of an informal care relationship (s 20 DFVP Act).

Young people as applicants

A person under 18 can apply for or be a respondent to a domestic violence order if they are in an intimate personal relationship or an informal care relationship, but not a family relationship (s 22 DFVP Act).

This means that children under the age of 18 cannot apply for a domestic violence order against their parents or other family members. Referrals to other agencies such as Family and Child Connect, a Family Wellbeing Service (if they are Aboriginal or Torres Strait Islander) or Child Safety should be considered in these cases (see *About Child Protection*, Department of Children, Youth Justice and Multicultural Affairs (www.cyjma.qld.gov.au)).

Police as applicants

Police officers are very important in responding to DFV. A police officer must investigate if they reasonably suspect that DFV has been committed (s 100(1) DFVP Act). If, after investigation, the police officer believes that DFV has been committed, they must consider whether it is necessary or desirable to take action to protect the person immediately (and in the longer term) from further DFV and what is the most effective action to take. This can

include applying for a domestic violence order, issuing a police protection order or taking the respondent into custody.

Who can be protected by a domestic violence order?

A domestic violence order can protect other people who have been affected by the violence. People who can be named on and protected by an order include:

- a child of the aggrieved
- a child who usually lives with the aggrieved (e.g. a child who spends time with the aggrieved on a regular basis)
- a relative of the aggrieved
- an associate of the aggrieved (e.g. their new partner, work colleague or friend) (s 24 DFVP Act).

A person included on the order is called a 'named person'. The same conditions that apply to protect the aggrieved will also apply to the named person.

The court may name a relative or associate of the aggrieved if it is satisfied that naming the person is necessary or desirable to protect that person from DFV.

Naming a child on an order

A court can name a child of the aggrieved or a child who usually lives with the aggrieved in a domestic violence order to protect the child from associated domestic violence or being exposed to domestic violence by the respondent (s 53(b) DFVP Act). Unborn children can also be named on the order. The order will take effect when the child is born (S 67 DFVP Act).

The Act states that a child is exposed to domestic violence if a child:

- sees or hears an assault
- overhears threats of physical abuse
- overhears repeated denigration
- comforts a person who has been abused
- observes bruises or injuries to another person
- cleans up property that has been damaged
- is present when police attend a domestic violence incident.

The court is required to consider naming children on a domestic violence order (s 54 DFVP Act) even if the parties have not requested that the children be named or where the respondent does not agree to the child being named. The court has the power to obtain information from the Department of Children, Youth Justice and Multicultural Affairs if the court considers that the department may have information that will assist the court in making a decision about whether to name the child (s 55 DFVP Act).

If a child is named on the domestic violence order, the conditions on the order can be tailored to allow for the respondent to see the child pursuant to a family law order or by written agreement between the parties.

The *Family Law Act 1975* (Cth) (Family Law Act) now also recognises that a child is exposed to family violence when they see or hear or otherwise experience the effects of family violence. The Family Law Act outlines some similar examples of what being exposed to family violence by a child looks like (s 4AB Family Law Act).

Types of Protection Orders

The DFVP Act refers to:

- a protection order (an order made once a final decision by the court has been made)
- a temporary protection order (a temporary order while a court decides whether to make a (final) protection order).

A protection order can continue for any period of time the court considers necessary and desirable to protect the aggrieved, but if not expressly stated in the order, for five years after the day the order is made.

The period of time can be less than five years only if the court is satisfied there are reasons for doing so, and the court must give reasons for doing so (s 97 DFVP Act).

Urgent orders

Urgent orders may be made to protect the aggrieved even if the respondent is not present in court or is not notified about an application for a domestic violence order (ss 23(4), 27(b), 40 DFVP Act). These orders are described as *ex parte* orders (i.e. the order is considered by the court without the parties there or only one party (the aggrieved) present). These types of applications occur where the serious nature of the allegations in the application warrant an order being made prior to the respondent being served and knowing about the application.

The aggrieved is required to establish that an urgent order is necessary or desirable.

Consent orders

The respondent may choose to agree to, or not oppose, the court making or varying a domestic violence order—this is referred to as an order by consent (s 51 DFVP Act).

The respondent does not have to admit to the facts in the application or agree with the aggrieved's side of the story for the court to make consent orders.

For an order by consent, the court must be satisfied that a relevant relationship exists between the aggrieved and the respondent (s 51(1)(a) DFVP Act). The court does not need to be satisfied that domestic violence has occurred or that the order is necessary or desirable to protect the aggrieved from domestic violence (s 51(1)(b) DFVP Act).

The court may refuse to make or vary a domestic violence order by consent if the court believes the making or varying of the order may pose a risk to the safety of the aggrieved, any named person or any child affected by the order (s 51(6) DFVP Act).

If a police officer is making an application for a domestic violence order with the consent of the respondent, the consent of the aggrieved is usually also required but there are circumstances where there is not necessary (s 51(3) DFVP Act).

Intervention orders

A court can also make an intervention order when it is making or varying a domestic violence order.

An intervention order is directed towards the respondent and requires them to attend an approved intervention program and/or counselling (s 69 DFVP Act) to address their violent behaviour. This order can only be made with the respondent's consent (s 71 DFVP Act). The intervention order can only be made if there is an appropriate program or counselling available at a reasonably convenient location to the respondent. For details of available intervention programs in Queensland see [Find local support | Community support | Queensland Government \(www.qld.gov.au\)](#).

Police protection notices

When police attend a place where DFV is occurring or has occurred and if the respondent is present, they can issue a police protection notice to the respondent. This notice immediately requires the respondent to be of good behaviour towards the aggrieved and any named person, and to not commit domestic violence. If the named person is a child, the respondent must also not expose the child to domestic violence. If the attending officers believe it is

reasonable and necessary to protect the aggrieved from domestic violence, they may include:

- a 24-hour cool-down condition on the notice (s 107 DFVP Act). This condition requires the respondent to leave the home and not contact the aggrieved or named person for a period of time not exceeding 24 hours
- a no-contact condition (s 107A DFVP Act). In addition to the above requirements, this condition also requires the respondent to not locate the aggrieved's whereabouts if unknown to the respondent
- an ouster condition, which stops the respondent from approaching or entering the stated premises (s 107B DFVP Act).
- a return condition, which allows the respondent under police supervision to return to the premises to recover certain personal property (s 107C DFVP Act).

Prior to issuing the notice, the police officer must obtain approval from a supervising police officer and also reasonably believe that:

- the respondent has committed the domestic violence
- there is no current police protection order or domestic violence order in place between the aggrieved and the respondent
- the notice is desirable or necessary to protect the aggrieved
- the respondent should not be taken into custody (ss 101,102 DFVP Act).

After the police protection notice is made, a copy of the notice must be filed by the police officer at the local Magistrates Court. Filing of the notice is taken to be an application for a domestic violence order made by a police officer. Where a notice has been issued and an order is then made in the court, the notice remains in force until the order is served on the respondent and becomes enforceable (s 111 DFVP Act).

Breaching a police protection notice is an offence with a maximum penalty of three years imprisonment or 120 penalty units (presently \$137.85 per unit as at 1 July 2021). Police also have the power to arrest a person without a warrant for breaching a police protection notice (for more information on how police can respond see Domestic violence | QPS (police.qld.gov.au)).

Varying (or Changing) and Ending a Domestic Violence Order

A person can apply to a court to vary (or change) a domestic violence order. Variations may be made to the conditions, the duration of the order or the people named on the order.

A court can also change a domestic violence order on its own initiative (ss 86, 91 DFVP Act).

Before changing a domestic violence order, the things that the court must look at include why the order was made, any findings of fact that were made by a magistrate (this usually happens after a trial and the magistrate has heard evidence from both parties and prefers one version of the facts over the other), when the order was made and whether there has been compliance with any voluntary intervention order.

The court must also consider the safety, protection and wellbeing of the people who are protected by the order and the wishes of the aggrieved.

Most importantly, the court must be satisfied that the aggrieved has not been pressured into agreeing to the variation (ss 91, 92 DFVP Act).

When a court can make or vary an order without anyone applying

In child protection proceedings

When a Childrens Court is dealing with a child protection matter, it can make a domestic violence order. It can make a domestic violence order against a parent of a child for whom an order is sought if:

- it is satisfied that a protection order could be made against that parent (based on the evidence and on the requirements of the DFVP Act as outlined above) and
- the person named as aggrieved is also a parent of the child who is involved in the application for a child protection order.

An existing domestic violence order can be varied during child protection proceedings. The court may consider extending the current order or varying its conditions to suit the circumstances of the case.

The court can make an order of its own volition or on the application of a party (e.g. a separate representative in a child protection matter can apply for an order).

Alternatively, the Director of Child Protection Litigation could apply as the applicant to the child protection order or the Department of Children, Youth Justice and Multicultural Affairs could apply in court assessment order proceedings only.

The court cannot make an order unless each party to the child protection proceeding has been given a reasonable opportunity to present evidence, and prepare and make submissions. The court can make or vary an order during a child protection hearing or it can adjourn to hear it at a later date (s 43 DFVP Act).

Making or varying an order against an offender

When a court convicts a person of a domestic violence offence, it can, of its own initiative, make a domestic violence order against the offender. It must be satisfied that a domestic violence order could be made against the offender (s 37 DFVP Act).

If a protection order is already in force, the court must consider the order and whether it needs to be varied.

Again, the court must give the opportunity for the offender, the aggrieved (if possible) and the prosecuting authority to present evidence and prepare and make submissions (s 42 DFVP Act).

Conditions of a Domestic Violence Order

A domestic violence order restricts or stops certain behaviours of the respondent towards the aggrieved and other people who are named on the order.

There are certain conditions that must be included in all domestic violence orders. These conditions are described as 'standard conditions'. The standard conditions are that the respondent:

- be of good behaviour and must not commit domestic violence or associated domestic violence towards the aggrieved
- be of good behaviour towards any adult named person
- not commit associated domestic violence against any adult named person
- be of good behaviour towards a named child
- not commit associated domestic violence against the named child
- not expose the child to domestic violence (s 56 DFVP Act).

In addition to the standard conditions, the court can add extra conditions that it considers necessary and desirable in the circumstances and in the interests of the aggrieved, named

persons or the respondent themselves. The court must consider whether to impose an ouster condition on the respondent in relation to the aggrieved's usual place of residence. The most important principle for the court must be the safety, protection and wellbeing of people who fear or experience domestic violence including children (s 57 DFVP Act).ⁱ

Examples of the types of the conditions that can be included in a domestic violence order according to the DFVP Act are:

- stopping the respondent from approaching, contacting or locating the aggrieved or attempting to do any of these things
- stopping the respondent from being present at a place associated with a child (e.g. a school or kindergarten)
- requiring the respondent to return property to the aggrieved or allowing the aggrieved to recover their property and/or to access their home to recover their property
- stopping the respondent from going to the aggrieved's home. This can include a home that the respondent owns or has leased and where they live or lived together. It can also include where the aggrieved or a named person lives, works or goes to frequently (s 57 DFVP Act).

Weapons

If a domestic violence order is made, the respondent is not permitted to possess a weapon or hold a weapon's licence under the *Weapons Act 1990* (Qld).

The domestic violence order will inform the respondent that their licence has been revoked and provide information about the surrender of their weapons. This also applies to respondents who work with weapons such as police officers and defence force personnel (pt 3 div 8 DFVP Act).

A weapon includes a firearm, martial arts weapon or knuckle-duster. It also includes anything that the respondent has used or threatened to use in committing an act of domestic violence against the aggrieved such as a cross bow, a spear gun, a dog or a baseball bat, and the court may prohibit the respondent from possessing such an item during the length of the order (s 81 DFVP Act).

Police Powers to Take a Person Into Custody

Police can take a person into custody while investigating a domestic violence report made to them. This can occur where they reasonably suspect that a person has committed domestic

violence and another person is in danger of personal injury by the person, or property is in danger of being damaged by the person.

Police can detain a person for up to four hours (or eight hours if the respondent is intoxicated to the extent that they are incapable of understanding any document given to them such as the application for a protection order). A police officer can also apply for an order extending the detention period.

A police officer must, as soon as reasonably possible after a person is taken into custody, prepare an application for a domestic violence order on which the person in custody is named as the respondent (ss 116–128 DFVP Act).

An Aggrieved Travels or Moves Interstate

Legislation in each state and territory ensures that a domestic violence order issued in one state or territory will automatically apply and be enforceable in all states and territories of Australia. This means that Queensland automatically recognises interstate domestic violence orders and that a domestic violence order, police protection notice or release condition made in Queensland will be recognised and enforced in other states or territories. This also includes orders varied in Queensland and Queensland orders varied by another state court.

If the domestic violence order was made before 25 November 2017, the order can be registered at any time to ensure nationwide protection by making an application to any local court in Australia (use Form 35 in Queensland). The respondent will not be notified of the application to register in another state unless the aggrieved gives permission for that to occur.

A domestic violence order made in New Zealand after 25 November 2017 can be registered in any state or territory of Australia and will automatically apply and be enforceable in all states and territories.

States and territories also have access to a national database to share domestic violence order information.

Information Sharing

The DFVP Act allows for government and non-government agencies in Queensland to share information with each other where a person's safety may be at risk (ss 169A–169O DFVP Act). The DFVP Act requires agencies to ask for a person's consent to share information

where safe, possible and practical but allows information to be shared where the agency reasonably believes:

- a person fears or is experiencing domestic violence and
- the information may help another service receiving the information to assess whether there is a serious threat to the person's life, health or safety because of domestic violence.

Agencies included in the information-sharing scheme are government departments, such as child protection services, corrective services, police and health services, and also includes specialist domestic violence service providers or support service provider. There are confidentiality obligations on the agencies involved as well as the requirement to develop guidelines to protect people's information privacy.

Domestic and Family Violence—What Happens at Court

The Domestic and Family Violence Protection Rules

The *Domestic and Family Violence Protection Rules 2014* (Qld) (DFVP Rules) govern the court process and ensure applications are resolved in ways that minimise expense, and proceedings are just and expeditious in a way that is consistent with the objects of the DFVP Act. The DFVP Rules provide guidance on:

- how to prove personal service
- what happens with subpoenas
- whether a court can make directions
- appointing litigation guardians
- how evidence can be presented to the court
- how affidavits can be presented.

The initial court process

After an aggrieved has filed an application for a domestic violence order, there can be many short court appearances before the application is finalised—these are called 'mentions'. The aggrieved will be provided with the first court date when they lodge the application form at a Magistrates Court. This date will be included in the documents that are served on the respondent.

The length of time that an application is before the court, how the application proceeds in the court process and whether it is finalised by agreement or by a hearing/trial (and giving of evidence) will depend upon a lot of factors.

The respondent could agree to the application by consent, agree to the application without admitting to the content of the application, or they could contest or oppose the application. Sometimes it takes a long time for police to locate and serve the original application or any order that is made on the respondent.

If both the aggrieved and the respondent are in court and agree to the order then the magistrate may make the domestic violence order (s 51 DFVP Act). If the two parties do not agree, the magistrate may make a temporary order.

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 order that is valid until a final decision is made.

If the respondent is not present at the mention and the court is satisfied that they have been served, the court may make a final domestic violence order (s 39 DFVP Act).

In some magistrates courts, the magistrate will actively manage the court process and will require the parties to file written material by a certain date (e.g. an affidavit) and set a date for the hearing. Practices vary from court to court.

The hearing

If the respondent opposes the making of an order, then the magistrate will make a date for a hearing of the application. This will allow evidence to be heard from one or both of the parties and for cross-examination (asking questions of the witness) to occur.

The magistrate will then make a decision about whether the application satisfies the requirements of the DFVP Act. The court is not required to follow the rules of evidence and only has to be satisfied that it was more probable than not that the acts alleged by the aggrieved had occurred (not that it was beyond reasonable doubt that they occurred).

The aggrieved may bring their own support person to court, but they are not permitted to speak for the aggrieved unless they have made the application as an authorised person.

The hearing may take up a whole day, and child care arrangements should be made by either party to accommodate this.

Court staff can arrange additional safety precautions for the aggrieved at a court if needed such as waiting in a safety room at the court rather than the public waiting area. The aggrieved should complete a safety form.

Children may only give evidence in the proceedings with the leave (permission) of the court, and only if the child is over 12 years old, is represented by a lawyer and agrees to give evidence (this is not applicable if they are the applicant or respondent to the application).

The court must also consider whether to make an aggrieved, a child or a relative/associate of the aggrieved 'a protected person' in the proceedings. Being a protected person allows them to give evidence in a way that is not as confronting as being in a court room and being asked questions by the person they allege has caused them harm. Examples of this may be:

- allowing them to give evidence outside the court room and via audio visual link either live or via replay
- placing a screen or one-way glass so that the aggrieved cannot see the respondent
- making the respondent stay in another room while the aggrieved gives evidence.

The court can also order that the respondent, if not represented, cannot ask questions or cross-examine a protected witness (s 151 DFVP Act).

The court is closed to the public. There are restrictions against publishing information about the case to the public.

Legal Help for Parties in Court

Both the aggrieved and respondent parties have options to get legal help and assistance.

They can represent themselves or ask a lawyer to appear for them, and if they are an aggrieved be represented by a police prosecutor.

Assistance from a police prosecutor

A police prosecutor will represent an aggrieved where police are making the application for a domestic violence order on their behalf.

A police prosecutor may also appear for an aggrieved who is making their own (private) application for a domestic violence order. The aggrieved should approach the police prosecutor in court and ask for assistance as practices vary from court to court.

Assistance from a lawyer

Legal assistance for both an aggrieved and respondent party can be obtained through Legal Aid Queensland if a person is eligible for a grant of aid. A person can apply for legal aid through a solicitor in a private firm that is approved to do legal aid work or by going directly to a legal aid office.

Community legal centres may also be able to assist an aggrieved or respondent to complete their application for a domestic violence order and with representation (see www.communitylegalqld.org.au/).

Otherwise a solicitor in a private law firm may be engaged.

Assistance available at court

A domestic violence duty lawyer is a free lawyer available in 14 courts across Queensland. A lawyer is available for both the aggrieved and the respondent to provide legal advice on the day of court and in some cases representation in court.

The Women's Legal Service operates a domestic violence unit in Brisbane, at the Gold Coast and in Caboolture. This includes legal advice, safety planning, assistance to draft documents and representation in some circumstances (see Domestic Violence Units - Women's Legal Service Queensland at wlsq.org.au).

Assistance from a domestic violence service

Many courts in Queensland have violence prevention workers who:

- assist an aggrieved to apply for an order
- help an aggrieved to access the court's safety facilities
- explain orders to clients
- assist with completing applications
- liaise with the police prosecutor or court
- refer the aggrieved for legal advice and representation.

Additionally, local domestic violence services or refuge staff across Queensland will assist people affected by domestic and family violence in making an application for a domestic violence order or referring them to a service that will assist.

If the aggrieved wishes to authorise a person to apply for a domestic violence order, they should ensure that the person has experience in this kind of matter.

Criminal Law Options

Breach of a domestic violence order

Breaching the conditions of a domestic violence order is a criminal offence. Once reported, police should investigate and if it can be proved the order was broken, the respondent can

be charged with breaching the domestic violence order. They could also be charged with other criminal offences depending on the circumstances.

If a respondent is convicted of contravening an order, they can be sentenced to a term of imprisonment of up to three years or a fine of up to 120 penalty units (presently \$137.85 per unit).

If a respondent is convicted of contravening an order and has within five years prior to that been convicted of a domestic violence offence, they could be sentenced to a term of imprisonment of up to five years or a fine of up to 240 penalty units.

Charging people with an offence

In addition to breaching a domestic violence order, police have many options in the *Criminal Code Act 1899* (Qld) to charge people who commit DFV.

Below are a few examples of the types of charges that police can consider depending upon what happened and what can be proven by them:

- assault
- grievous bodily harm
- torture
- wounding
- serious animal cruelty (where animals have been injured)
- rape
- indecent assault
- murder
- manslaughter
- strangulation.

One benefit of police charging someone with criminal charges is that an offender may be subject to strict bail conditions which, if breached, will result in them being placed into custody. This may enhance safety of a victim. The downside is participation in long legal processes including giving evidence which may add to someone's trauma.

The pros and cons of making a complaint to police about criminal DFV behaviour is something that can be discussed with the legal services mentioned above or the non-government agencies that support victims of DFV mentioned below.

Domestic Violence and the Interface with Family Law

There is often a need to resolve parenting issues at the same time as there is an application for a domestic violence order.

Orders about parenting arrangements after separation are made in the Federal Circuit and Family Court of Australia.

Family law orders are recognised in the Domestic and Family Violence Protection Act

Both pieces of legislation recognise the interrelationship of DFV and associated parenting issues. The DFVP Act acknowledges this interrelationship by giving the magistrates courts the power to consider a family law order and to consider whether to revive, vary, discharge or suspend the order when making or varying a domestic violence order (s 78 DFVP Act). The DFVP Act makes it clear that the court must not diminish the protection given by the domestic violence order to facilitate the family law order.

The Family Law Act recognises the state domestic violence orders by giving them power to review family law orders.

Parenting orders that are made in the Federal Circuit and Family Law Court will override any inconsistent conditions in a domestic violence order because federal laws override state laws. To remedy this situation, s 68R of the Family Law Act provides state courts, including Queensland magistrates courts, with the power to amend parenting orders to remove inconsistencies between the family law order and the domestic violence order to ensure that an aggrieved and their children are protected from violence. The DFVP Act specifically refers to s 68R of the Family Law Act and directs the court to consider making, suspending or varying parenting orders to ensure that they are consistent with the relevant protection order (s 78 DFVP Act).

Domestic violence and the Family Law Act

If any party has fears for their or their children's safety at court, there are safe rooms available in many registries and sometimes arrangements can be made for separate entry and exit points. Parties may also be able to attend court by telephone or by video.

The Federal Circuit and Family Court of Australia in Brisbane now has the Lighthouse Project, which is an approach taken by the court to screen for risk with a primary focus on improving outcomes for families involved in the family law system. Families are asked to

complete a questionnaire when they first file an application, which is used to assess risk and then used to manage the case according to the risk reported by the parties.

The Family Law Act acknowledges domestic and family violence (referred to as family violence) and its relationship with parenting orders by:

- providing a broad definition of family violence and abuse, which includes coercive and controlling behaviour
- requiring the court to consider whether a domestic violence order has been made when determining what is in the best interests of the child
- requiring the court to look at the nature of the order, the circumstances in which the order was made, any findings by the court and anything that has been admitted in proceedings for the order, and any other relevant matter (s 60CC(3)(k) Family Law Act).
- including in the definition of child abuse 'serious psychological harm', which comes from a child being exposed to DFV
- directing a court to give the greatest consideration or weight to the need to protect a child from physical or psychological harm, and from being subjected to, or exposed to, abuse, neglect or family violence (s 60CC(2)(a) Family Law Act)
- requiring advisors (including lawyers) to advise their clients that the best interests of the child is the paramount consideration when deciding how to resolve a parenting dispute. Where the child is at risk of harm, the advisor has to instruct parents that this should be given greater weight over the benefit of a meaningful relationship with both parents (s 60D Family Law Act)
- requiring parties to parenting disputes to file a Notice of Abuse in every case where family violence is alleged outlining any allegations about the existence of family violence or child abuse (s 67ZBA Family law Act)
- improving the ability of child protection services to participate in family law proceedings
- referring to the United Nations Convention on the Rights of the Child as an object of Part VII.

Support for Survivors of Domestic Violence

Making a safety plan

A person living with DFV should consider developing a safety plan for their own benefit and that of their children. Regardless of whether the person decides to stay in the relationship or is thinking of leaving, they need to think carefully about safety. This can include:

- having a bag packed ready to leave
- thinking about safe ways to leave
- letting trusted people know about the abuse
- programming the police number into your telephone or having a spare set of keys or important documents hidden where you can get them easily.
- It is recommended that assistance is sought from a domestic violence service to develop a safety plan.

To get assistance with this call DV Connect on 1800 811 811 or visit their website at www.dvconnect.org.

Emergency accommodation

Refuges, safe houses or shelters can provide safe and secure accommodation for women and children fleeing domestic violence. The location and details of these refuges are kept confidential and are not available to the public.

Refuge staff can assist with supporting women and children during this time and offer accommodation, referral services, financial counselling, emotional support and legal support. Most refuges require a weekly financial contribution to cover costs. It is generally determined according to the income of the aggrieved.

Centrelink emergency payment

It is important to contact Centrelink and advise them of any change in circumstances. An emergency payment may be possible if it can be established that the aggrieved had to leave their home due to domestic violence. This payment is not a loan and is not repayable, and it will assist with the costs of re-establishing a home. For further information see www.servicesaustralia.gov.au.

Victim Assist Queensland

Victim Assist Queensland is the Queensland Government scheme focusing on assisting the recovery of victims injured as a result of an act of violence through provision of financial assistance outlined in the *Victims of Crime Assistance Act 2009* (Qld).

Expenses, such as childcare, home relocation, change of name, storage, upgrades to security, furniture, white goods, rent at an emergency shelter, and medical, dental and counselling expenses may be met if an application is successful.

For further assistance call 1300 546 587 or visit Victim Assist Queensland at www.qld.gov.au/law/crime-and-police/victim-assist-queensland.

Domestic Violence and Employment

It is advisable for a person experiencing domestic violence, to discuss their situation with their manager or supervisor as they may be entitled to compassionate leave, sick leave or annual leave.

The Queensland Government offers domestic violence leave, which is available to people who are experiencing DFV or who are supporting a person experiencing DFV. The leave is a minimum of 10 days and is available for situations such as attending medical appointments, legal appointments, police or counselling appointments, attending courts or other legal proceedings, organising alternative accommodation or care arrangements. For further information contact the Public Service Commission (see Directive 3/20).

Australian Government employees are also entitled to five days of unpaid family and domestic violence leave covered by the *Fair Work Act 2009* (Cth).

Employers do have a duty of care to provide a safe and healthy workplace. The employee may wish to discuss with their employer some measures such as changing their direct phone line or transferring to another work station. If there is a domestic violence order that prevents a respondent from attending at a place of employment, that information should be disclosed to the employer so that they are aware of the situation and can then take protective steps to ensure safety at work.

Devising a safety plan for leaving and arriving at work, and making sure to use a variety of routes to and from work or having someone to walk with to the bus or train may be wise.

Domestic Violence and Older People

Unfortunately, many older men and women experience DFV from their spouses, partners, family or their caregivers. Older people find it difficult to leave an abusive relationship or even identify that they are being abused, as it could have been occurring for many years and they view it as a normal element of the relationship. Older people also struggle to access information and services due to a lack of knowledge, limited access to the internet, social isolation and physical incapacity. Indicators that an older person is experiencing DFV include:

- the sudden execution of a new will or enduring power of attorney in favour of an unusual person
- transfer of full or part ownership in the family home to a spouse or family member
- significant and unexplained withdrawals of money from bank accounts
- dismissal of injuries or anxiety by a spouse or carer as age or dementia related
- sudden change of medical practitioner
- demonstrated anxiety around particular family members or carers
- social isolation and/or withdrawal from participation in normal activities.

Legal advice, referral and social work support is available for older members of the community from organisations such as the Elder Abuse Prevention Unit or the Seniors Legal and Support Service run by Caxton Legal Centre Inc.

Legal Notices

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