

Domestic violence and family violence

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The *Domestic and Family Violence Protection Act 1989* (Qld) applies to violence where there is a domestic relationship between the parties. However, in situations where there is not a domestic relationship between the parties, the *Peace and Good Behaviour Act 1982* (Qld) applies instead.

The *Family Law Act 1975* (Cth) also contains provisions that are relevant to domestic violence, as explained below.

What is domestic violence?

Under the *Domestic and Family Violence Protection Act*, there must first be a domestic relationship, known as a 'relevant relationship', between the aggrieved party and the respondent. This can include a spousal relationship, intimate personal relationship, family relationship or informal care relationship.

Domestic violence means behaviour that is physically, sexually, emotionally, psychologically or economically abusive, threatening, coercive, or controls or dominates the second person and causes the second person to fear for their safety or well-being, or that of someone else. It can include threats of self-harm, threatening to damage property or threatening to injure a pet.

The person committing the domestic violence need not personally commit the act or threaten to commit it.

Under the *Family Law Act*, 'family violence' means violent, threatening or other behaviour by a person that coerces or controls a member of their family or causes them to be fearful. The examples of what would be considered to be domestic violence under the *Domestic and Family Violence Protection Act*, would also be family violence under the Family Law Act.

Who can apply for a Protection Order?

A police officer, the aggrieved or an authorised person on behalf of the aggrieved may apply for a protection order in the Magistrates Court. There can only be one aggrieved named on an application for a protection order, but more than one person may be named as a respondent.

The aggrieved can also bring an application for an order in the Family Court or Federal Circuit Court, which can prohibit specific conduct by another party to the proceedings. However, the Magistrates Court is the more cost effective option.

If a person is before a Magistrates Court, Children's Court, District Court or the Supreme Court for a matter involving domestic violence, the court can make a domestic violence order if the person pleads guilty or is found guilty of certain offences. The court can also vary an order already in existence, without an application for an order being made.

A respondent to an application for a protection order can, by the same means as outlined above,

bring a cross application against the aggrieved to be dealt with at the same time as the application.

A person may also apply to the Magistrates Court for the registration of an interstate order.

The court must be satisfied that the protection order is necessary or desirable to protect the aggrieved from domestic violence. This is a “future looking” exercise, so the events after the making of the application and the knowledge of future contact between the parties need to be considered.

What types of orders can be made?

On the first court date of an Application for a Protection Order, sometimes in the absence of the respondent, the court will often make a temporary protection order. That order extends to the next court date.

When a matter is finalised, if the grounds for an order are satisfied, the court makes a protection order. Both a temporary protection order and a protection order are described as ‘Domestic Violence Orders’.

All Domestic Violence Orders must include standard conditions, to be of good behaviour and not commit domestic violence. Otherwise, orders frequently contain conditions including the following:

- an ouster order, removing the respondent from the matrimonial home, sometimes without the respondent having first had the opportunity to be heard on the application;
- an order restricting the respondent from approaching the aggrieved’s home, or workplace;
- an order preventing the respondent from contacting or approaching another person named in the application, in addition to the aggrieved; and
- exceptions to provisions of the orders, to enable the aggrieved and the respondent to have contact in respect of their parenting arrangements.

How is domestic violence relevant to family law proceedings?

Domestic violence, or family violence as it is known under the *Family Law Act*, is relevant to family law proceedings as follows:

in parenting matters, the Family Court or Federal Circuit Court must be informed of any protection orders that apply to the child or a member of the child’s family;

- the Family Court or Federal Circuit Court must ensure that a parenting order is consistent with any protection order, and does not expose a person to an unacceptable risk of family violence;
- compulsory dispute resolution does not need to be conducted if there has been family violence;
- the presumption of equal shared parental responsibility does not apply where there are reasonable grounds to suggest that one of the parents has engaged in family violence;
- in rare circumstances, family violence may be relevant in property proceedings; and
- an aggrieved party must inform the Magistrates Court of any orders or ongoing proceedings in the Family Court or Federal Circuit Court when applying for a protection order. The Magistrates Court should take into account any relevant family contact order or pending proceedings.

If there is a conflict between a parenting order and a protection order, the latter is invalid to the extent of the inconsistency. However, the Magistrates Court can vary a parenting order when making a protection order if new evidence has appeared since the parenting order was made.

Parenting matters

In making parenting orders under Part VII of the Family Law Act, the court considers what is in the child's best interests. A primary consideration of the court will be "the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence". The court will consider any family violence involving a child or a member of the child's family. Further, the court will consider any family violence order which applies to the child or a member of the child's family.

When making a parenting order in relation to a child, the court must normally apply a presumption that it is in the best interests of the child for the parents to take equal shared parental responsibility for the child. That presumption triggers a requirement that the court consider whether a child should spend equal time with the parents, but the presumption of equal shared parental responsibility does not apply if there are reasonable grounds to believe that a parent has engaged in family violence or abuse of a child.

Other important information

- Domestic Violence Orders impact on the respondent's ability to hold or obtain a firearm license.
- Many applications for Domestic Violence Orders are resolved by consent and without any admissions by the respondent. Otherwise the aggrieved and the respondent are both exposed to the risk of giving sworn evidence that may later be contrasted with their evidence in Family Court or Federal Circuit Court proceedings.
- Making a Domestic Violence Order without more evidence will not be sufficient to convince the Family Court or Federal Circuit Court that there has been family violence.
- Because of the potential impact domestic violence issues can have on Family Court and Federal Circuit Court proceedings, we recommend that clients obtain legal advice before making a protection order application or responding to one that has been made against them.

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