



**ATSILS**  
Aboriginal and  
Torres Strait Islander  
Legal Service (Qld) Ltd

## Legal Fact Sheet

# Domestic Violence Orders



### Are you or one of your family members being affected by Domestic Violence?

*Everyone has the right to live without fear of violence or abuse. If the violence or abuse is 'domestic violence', the law which applies to it in Queensland is the Domestic and Family Violence Protection Act 2012 ('the Act').*

#### **This fact sheet outlines:**

- What is domestic violence;
- How to obtain a domestic violence order & what it does;
- How Police Can Assist a person affected by domestic violence;
- Domestic violence order breaches;

*ATSILS is a non-profit, Aboriginal and Torres Strait Islander community-based organisation with 25 locations across Queensland. We provide innovative and professional legal services covering criminal, civil and family law areas.*

Freecall 24/7



1800 012 255

Last Updated: February 2023



## 1. What is domestic violence?

**Domestic violence** means abusive or violent behaviour by a person towards another person in a relationship. The behaviour can be one of these things, or a combination of two or more:

- Causing or threatening physical injury to a person, or their loved ones (including children).
- Causing or threatening property damage to a person's property, including their house, car, etc.
- Sexual abuse, including forcing a person to engage in a sexual activity.
- Emotional or psychological abuse.
- Economic abuse, including withholding money or access to a car from a person.
- Threatening to attempt suicide or self-harm in order to frighten or intimidate a person.
- Depriving a person of their personal liberty (including their right to have a job, visit family, etc.).
- Monitoring, tracking, or stalking a person.
- Coercive behaviour (forcing a person to do or not do something).
- Controlling or dominating another person and causing that person to fear for their own safety or someone else's safety (such as their children).

*Asking someone else to do any of these acts to another person is also domestic violence.*

The victim of domestic violence is called '**the aggrieved**' and the perpetrator is called '**the respondent**'.

Domestic Violence Orders are available to an aggrieved whose relationship falls into one of these three categories:

### **An intimate personal relationship –**

- A couple who are married, engaged, in a couple or de facto relationship, or who have been in this type of relationship but have since separated.
- People who share a child (including an unborn child).

### **A family relationship –**

- A parent of a child.
- A relative of a person whether by blood or marriage.
- A parent, guardian or relative according to Aboriginal or Torres Strait Islander custom.

### **An informal care relationship –**

- Where one person depends on another person for help with daily living like dressing and food.
- A carer for a person.

**If a relationship does not fall within one of these three categories, there may be other options available to protect a person, including a **Peace and Good Behaviour Order**.**

A person **under 18 years** old:

- **Cannot** apply for a domestic violence order against someone else.
- **Cannot** be listed as the respondent where the aggrieved has a 'family relationship' with them.
- **Can** have a police protection notice or domestic violence order taken out if they are in an intimate personal relationship or informal care relationship with the other person.

## 2. How do I obtain a domestic violence order?

You can personally apply for a domestic violence order (**'the application'**) at your local Magistrates Court, or you can authorise another person to apply on your behalf, such as an ATSILS lawyer, support worker, or attend at a local police station for assistance.

The application must state that you (**the aggrieved**) is (or was):

1. In a relationship with the respondent which falls into one of the three categories listed above;
2. Have suffered domestic violence from the respondent; and
3. You need protection from further domestic violence.

Once the Application is filed with the Magistrates Court, a date will be set for the Application to be heard by a Magistrate. The Police will notify the respondent of the date and provide them with a copy of the Application. If the respondent disagrees with the Application, they can appear before the Magistrate on the date of Court and contest the application. The Magistrate will most likely adjourn the matter until another court date when there is sufficient time to hear all the evidence and submissions of both parties ('a hearing'). The Magistrate may also make an order that would ensure the aggrieved is protected until the time of the hearing (a 'temporary protection order').

If the respondent does not contest the application for a domestic violence order, and the conditions listed above are met, the Court will most likely grant the application. If the respondent is not in Court, the police will try and serve a copy of the Domestic Violence Order on the respondent.

## 3. What does a domestic violence order do?

A domestic violence order must include a standard condition that the respondent be of good behaviour and not commit domestic violence and prohibits the respondent from having a weapon. It will usually be made for a period of 5 years. Domestic violence orders may also set out one or more further conditions that the respondent must comply with. These conditions will vary depending on the circumstances of the respondent and the aggrieved and the relief sought. For example, where the parties have children together, the children may be named, and an order made that the respondent must not expose any children named on the order to domestic violence. A child is 'exposed to violence' if they hear, watch, or experience domestic violence. The domestic violence order may also state that the respondent is not allowed to contact the aggrieved, except for a specific purpose such as access to a child.

## 4. What is a 'variation'?

If there are conditions on the domestic violence order that do not suit the aggrieved or the respondent, either party may apply to the Magistrates Court to have the conditions varied. An example is, if either party applied to have the domestic violence order extended or reduced. However, if the domestic violence order was taken out by the Police, the Police may oppose **any** variation. The police may also apply to vary a domestic violence order.

If there is a condition on the domestic violence order stating that the respondent cannot contact the aggrieved (a 'no contact condition'), neither party can contact each other unless they successfully apply to the court to have the condition varied. The court will **only** vary the condition if it is satisfied that the aggrieved is not at risk of further domestic violence. It does not matter that the aggrieved and the respondent want to be together again, if the Court cannot be satisfied that the aggrieved will be safe.

## 5. What can the police do to assist a person affected by domestic violence?

If the police suspect that domestic violence is occurring in a premise (i.e. a house), they have the power to enter the premises without a warrant and also:

- Seize any item that may have been used to commit the domestic violence; and
- Take the person committing the violence into police custody.

A police officer may take a person into custody if there is reasonable suspicion the person has committed domestic violence and there is danger of that person causing personal injury or damage to property and upon taking that

person into custody **must** apply for a domestic violence order naming that person as the respondent. The police officer may also issue a **'police protection notice'** against the respondent. The only difference between a police protection notice and a domestic violence order is that a police protection notice applies from the moment it is issued by the police (so it is immediate protection); whereas a domestic violence order applies from the moment it is ordered by the Magistrate.

## 6. Breach of a domestic violence order

Breaching a domestic violence order is a serious offence which can result in the respondent being sent to prison in certain circumstances. If the respondent breaches the domestic violence order, you should contact the police immediately. If the respondent knew that there was a domestic violence order in place, they will be charged for breaching the domestic violence order. If they did not know that there was a domestic violence order in place, the police will provide them with a copy of it so that they know in future what they can and cannot do.

## 7. Protection orders made in another State or Territory

Domestic violence orders are now automatically recognised and enforceable in each Australian State or Territory.

## 8. What ATSILS can do

ATSILS can help you obtain, vary, or contest a domestic violence order. If you are not sure if a domestic violence order is right for you, or you would like more information about the laws, please do not hesitate to contact our office and we can have a chat with you about it.

## 9. Obtaining Legal Advice?

*ATSILS provides innovative & professional legal services for Aboriginal and Torres Strait Islander people across Queensland.*

Freecall 24/7  1800 012 255

We can be contacted toll free on **1800 012 255**, 24 hours a day, 7 days a week. We have 25 offices located across Queensland so you will be put in touch with the closest regional office that is able assist you with your legal needs. In some instances, ATSILS might have a conflict of interest and will not be able to provide you with legal advice. If this is the case, you may wish to try Legal Aid Queensland on their Indigenous Information line on **1300 65 01 43**.

## 10. State-wide services for counselling and support

**Queensland Indigenous Family Violence Legal Service (QIFVLS)** – (legal and support) 8.30am to 5.00pm (Mon-Thu) 8:30am to 4:00pm (Friday) **1800 887 700**

<b>DV Connect (women)</b>	24 hours a day, 7 days a week	<b>1800 811 811</b>
<b>DV Connect (men)</b>	9am to 12 midnight, 7 days per week	<b>1800 600 636</b>
<b>Sexual assault helpline</b>	7.30am to 11.30pm, 7 days per week	<b>1800 010 120</b>

*This document is intended as a guide only and to provide general information. This document should not be relied upon as legal advice. Whilst all reasonable care has been taken in the preparation of this information, no liability is assumed for any errors or omissions.*