

Domestic violence: Obtaining a Protection Order

“Each time we face our fear, we gain strength, courage, and confidence in the doing.”

Obtaining a protection order is not a means in itself, but one of a series of steps to increase safety. It should **never** be considered on its own—as this may put your safety and that of your children in jeopardy. In the right type of case, it can be obtained urgently. Ordinarily a final order lasts for five years. An urgent variation of an existing order can also be made in the right type of case.

Important terms:

Aggrieved: the person in whose favour a protection order is made.

Applicant: the person who asks or applies for the making of an order. If the applicant is not the aggrieved, it may be a police officer or an authorised person.

Respondent: the person against whom a protection order is made.

In order to obtain a Domestic Violence Order the following must be proven:

1. THE RELATIONSHIP

You need to show that your relationship with the respondent was one of the following three relationships. If it was not one of these, then you cannot obtain a protection order. They are:

a. Intimate Personal Relationship

This includes persons who are married, engaged, dating/ were dating, are in a de facto relationship, divorced or are parents of a child either biologically or who are exercising or have parental responsibility for that child. It includes same-sex relationships.

b. Family Relationship

A family relationship exists when a person is related by blood or marriage to either the aggrieved or respondent. The definition of “related” has been expanded to include persons who may not fit into these categories if they consider themselves to be a relative of either the respondent or the aggrieved or if the aggrieved or respondent considers themselves related to that person.

c. Informal Care Relationship

When one party is providing informal care to the other in a situation where the other person is dependent on the person for help in their daily living, for example, caring for an aging parent or an incapacitated friend, are covered within this definition covered. However a parent child relationship or services engaged through a commercial agreement are not covered within this section.

2. ACTS OF DOMESTIC VIOLENCE

If your relationship is characteristic of the relationships described above you then need to show that there has been at least one act or a series of acts of domestic violence. Domestic violence means the respondent has engaged in the following behaviour/s against a person in a relevant relationship:

- a. Physical or Sexual abuse
- b. Emotional or psychological abuse. Emotional or psychological abuse means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person
- c. Economical abuse. Economic abuse means behaviour by a person that is coercive, deceptive or unreasonably controls another person, without the second person's consent, which affects the persons financial autonomy or withholds or threatens to withhold financial support which is essential for the person or the person dependants day to day living expenses
- d. Threats
- e. is coercive, which means to compel or force a person to do, or refrain from doing, something
- f. in any other way controls or dominates the aggrieved and causes the aggrieved to fear for the their safety or well being or that of someone else

Without limiting the above, these actions can include the following behaviours:

- a. causing personal injury to a person or threatening to do so
- b. coercing a person to engage in sexual activity or attempting to do so
- c. damaging a person's property or threatening to do so
- d. depriving a person of the person's liberty or threatening to do so
- e. threatening a person with the death or injury of the person, a child of the person, or someone else
- f. threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed
- g. causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person
- h. unauthorised surveillance of a person
- i. unlawfully stalking a person
- j. asking another person to engage in the above acts

Associated domestic violence occurs when one or more of the above acts are committed against your child or a child that normally resides with you, a relative or an associate. The court will consider that a child has been exposed to domestic violence if they see, hear or otherwise experience acts of domestic violence. For example the following are considered examples of exposure to domestic violence:

- a. overhearing threats of physical abuse
- b. overhearing repeated derogatory taunts, including racial taunts
- c. experiencing financial stress arising from economic abuse
- d. seeing or hearing an assault
- e. comforting or providing assistance to a person who has been physically abused
- f. observing bruising or other injuries of a person who has been physically abused
- g. cleaning up a site after property has been damaged
- h. being present at a domestic violence incident that is attended by police officers

It is vitally important that your application for a protection order, together with any supporting affidavit, details as much as possible of the domestic violence. To do otherwise could mean not obtaining the protection order, and any possible impact on other court proceedings, such as the Family Court.

It is also essential that any witnesses be interviewed, and those who may be in a position to produce documents (such as doctors, hospitals, police, Department of Communities, Telstra, etc.) then produce those documents, so as to assist your case.

If you do not show that there has been domestic violence, or sufficient domestic violence, you will not obtain an order.

3. OBTAINING A DOMESTIC VIOLENCE ORDER

Once the court is satisfied that the persons were in a relevant relationship and that the respondent has committed act/s of domestic violence, the court must consider if making a domestic violence order is necessary or desirable to protect the aggrieved from domestic violence.

In order to determine if it is necessary or desirable to make a domestic violence order the court must consider the following principles:

- a. people who fear or experience domestic violence, including children, should be treated with respect and disruption to their lives minimised;
- b. perpetrators of domestic violence should be held accountable for their use of violence and its impact on other people and, if possible, provided with an opportunity to change;

- c. if people have characteristics that may make them particularly vulnerable to domestic violence, any response to the domestic violence should take account of those characteristics
- d. circumstances in which there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their self-protection, the person who is most in need of protection should be identified;
- e. a civil response under the Act should operate in conjunction with, not instead of, the criminal law.
- f. The court may consider whether a voluntary intervention order has previously been made against the respondent and whether the respondent has complied with the order

All of these steps are proven on the civil standard of balance of probabilities i.e. is it more probable than not that these events occurred, as opposed to the criminal standard of beyond reasonable doubt.

ADDING PEOPLE

You have an obligation to tell the court about any other court proceedings in place between you and the respondent or that may impact on these court proceedings, for example as to children's matters.

To have others named on the order and therefore the subject of protection, you need to show (and therefore lead evidence to prove) that the order is necessary or desirable to protect the relative or associate from associated domestic violence.

ADDING CONDITIONS

Usually you will need more conditions than the standard ones. We will discuss with you as to what conditions best suit you. The court can order that the respondent be ousted from the home, and can order anything that it considers necessary and desirable. This gives it huge power to make an appropriate order.

COSTS

If your application is dismissed because it is:

- a. malicious;
- b. vexatious;
- c. frivolous; or
- d. deliberately false;

the court can then make an order for costs against you. Otherwise costs orders cannot be made. An aggrieved can never have a costs order made in their favour.

Common Mistakes

People assume that protection orders are easy to obtain. They may be –if the other side do not turn up or agree. However, in an increasing number of cases they are disputed, and in those cases, if there is a skilful opponent (either the respondent or a lawyer) they may be quite difficult to obtain if the groundwork in preparation of the application for court and in going to court hasnot been laid.

Our experience

We have vast experience in domestic violence matters, including running domestic violence trials. We have represented clients at domestic violence trials. Stephen Page acted for the successful applicant in Queensland's longest domestic violence trial of 7 days in 1997-1998. Due to threats he received from the respondent, Stephen also had to be protected. He gave evidence under cross-examination for four hours, and was protected when orders were issued.

Stephen Page has been the Queensland Law Society representative on three occasions to do with domestic violence issues, including as to the drafting of the Domestic and Family Violence Protection Act 2012 and the Domestic and Family Violence Protection Rules 2014. Stephen lobbied single handedly, successfully, to amend the laws to ensure children were not witnesses in their parents' domestic violence hearings. He lobbied, successfully, to ensure that when Magistrates make protection orders, they consider whether to freeze an existing Family Law Act order.

Stephen Page has also:

- ✓ Chaired the committee of a domestic violence refuge.
- ✓ Co-founded a domestic violence service in 1994.
- ✓ Been involved at the inception of a court based domestic violence committee, and served on the committee from 1999 to 2013.
- ✓ Served on the board of Relationships Australia (Queensland).
- ✓ Served on the board of a domestic violence charity, including as Deputy Chair.
- ✓ Been a nominee for White Ribbon Ambassador of the Year (2011). He has been a White Ribbon Ambassador since 2008.
- ✓ Been a co-recipient of the Prime Minister's Award, to do with his domestic violence work (2005).
- ✓ Delivered training and spoken at local, national and international conferences about domestic violence.