

# Applying for a DVO



## What's the difference between a private and a police application for a DVO?

Applications for DVOs may be made either privately, by the aggrieved (an aggrieved is the person experiencing domestic and/or family violence who will benefit from having a domestic violence order or a police protection notice), or by the police on behalf of the aggrieved. There are a few differences between private and police applications but both individuals and the police can apply for a new DVO, or to vary an existing DVO.

***Making a Private Application:*** The aggrieved can apply for a DVO without the incident being investigated by police. However, it is recommended that the aggrieved seeks assistance to complete their application as an incorrect or incomplete application can lead to the case being delayed or dismissed. The application form for a DVO can be obtained from the local Magistrates Court or downloaded from the Queensland Courts website. The aggrieved can:

- access practical and emotional support from a domestic violence service to: assist them to complete an application; discuss what evidence could be attached to the application to strengthen their

case; help with safety planning; and in some instances, accompany them to court (e.g. court assistance worker) or to see the police.

- ask someone else to apply for them but they must give that person authority to do so on their behalf. Generally the authority must be in writing and the signed authority lodged at the court house at the same time as the application.
- engage a private solicitor, or obtain free advice from a community legal service. The aggrieved can also apply to Legal Aid Queensland to obtain free legal representation in court. People with impaired capacity can apply for a DVO through the Office of the Adult Guardian.

***Police applications:*** If police attend a domestic violence incident, or if a report or statement is made at a police station by the aggrieved or a witness, and police reasonably believe that domestic violence has been committed, they can apply, on behalf of the aggrieved, for a new DVO or to vary an existing DVO. The police will complete all the necessary paperwork and appear for the aggrieved in court. They can also:



- issue a police protection notice, effective when it has been served on the respondent. (This works like a temporary protection order and will protect the aggrieved until the application for a DVO, generated by the police protection notice, goes to court.)
- take the respondent into custody (generally up to four hours, with a maximum of eight hours in some cases) during which time police must apply to the court for a DVO.
- fax, telephone, radio or email for an urgent temporary protection order, which is particularly important in remote areas where courts sit less frequently.
- clearly explain the conditions of the order when it is served on the respondent.
- charge the respondent with a criminal offence (e.g. stalking, grievous bodily harm).
- information about any weapon that the respondent may have.
- copies of any court orders (e.g. family law orders about their children, children's court orders, and/ or expired DVOs) to attach to their application.
- information about whether an interpreter is required. The aggrieved must include a request for an interpreter, and the language required, in their DVO application and the court will decide whether an interpreter can be used or not.

### **What do the police / support service / legal advisor need to know when providing assistance to complete the DVO application?**

The aggrieved should tell the police/support service/legal advisor about any domestic violence, including relevant threats/threatened violence or abuse that has occurred over time, or more recently: when where and how it happened, who was there, any injuries the aggrieved incurred, and how this abuse has affected the aggrieved.

The aggrieved can also start gathering the information they will need to support their application should the matter go to a hearing. This could include:

- any evidence they might have about the domestic violence (e.g. doctors' reports, statements from witnesses, diary entries about the abusive behaviour, photos of any injuries, abusive emails or text messages, evidence of contact with domestic violence services).

### **What if the aggrieved needs urgent protection?**

When an application for a DVO is lodged, a request can be made for the court to issue a temporary protection order, and the police can also directly apply for a temporary protection order. A request can be made for the matter to be considered on an urgent basis and if the circumstances require immediate action a temporary protection order can be made on the same day. A temporary protection order can contain the same conditions as a final order and can protect the aggrieved and their children or others named on the application, until the court can consider the application in detail. The police will deliver and explain the temporary order to the respondent, including the date and time the court will consider granting a further order. This information will also be included in the temporary order.



## **If the aggrieved is a temporary resident in Australia and leaves their partner as a result of domestic violence, will they be forced to leave?**

In some cases the aggrieved is dependent on their partner's visa, or is sponsored by their partner to be in Australia. In these cases the aggrieved may be able to apply to remain in Australia in their own right because of the abuse, if there are children of the relationship, or by applying for a different visa (e.g. skills related visa or protection visa). The aggrieved should contact a migration agent before, or as soon as possible after, they leave the relationship to find out about their options. Decisions about the migration status of the aggrieved can only be made by the Department of Home Affairs.

## **Will the DVO still be recognised if the aggrieved moves interstate?**

Yes. Under the National Domestic Violence Order Scheme, all DVOs issued after 25 November 2017 will be applicable and enforceable in all states and territories within Australia. DVOs issued before 25 November 2017 will still be recognised if the aggrieved registers to have their order declared as a national DVO. The aggrieved will be required to fill out a form to register their interstate order and will need a certified copy of their current DVO and evidence that the respondent has been served with a copy of that order.

DVOs made in New Zealand may be enforced in Australia, but they must be registered in order to be recognised. Australian variations or revocations of New Zealand orders are recognized in Australia, but not New Zealand.

## **What happens after the DVO application is completed?**

- The application is lodged at the courthouse.
- The aggrieved is given a date for the court 'mention' (first day in court), usually two

to four weeks later.

- Police serve the respondent with a copy of the application which will also have the date of the court mention on it.
- If both parties are in court for the mention, and agree to the order, the magistrate can make the DVO. The aggrieved will not have to give evidence.
- If the respondent has not been given a copy of the application and informed of the court date before the matter is mentioned in court, the magistrate must adjourn the matter to another date to give police more time to locate the respondent and give them the paperwork. The magistrate can make a temporary protection order at this time to protect the aggrieved until that matter is finalised. If the respondent has been notified of the court date and chooses not to appear in court (in person or by phone), or contact the court asking for an adjournment, the magistrate can make a final order in the respondent's absence. If the respondent attends court and does not agree to an order, the magistrate can set the matter for a hearing.





## LEGAL SERVICES

### Legal Aid

[www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

or call 1300 651 188

### Community Legal Centres

[www.qails.org.au](http://www.qails.org.au)

### Queensland Law Society

[www.qls.com.au](http://www.qls.com.au)

### Office of the Adult Guardian:

1300 653 187

### DVO Application Form:

<http://www.courts.qld.gov.au/going-to-court/domestic-violence/domestic-violence-orders/applying-for-a-domestic-violence-order>



## SUPPORT AND RESOURCES

Call the Domestic Violence Hotline on **1800 811 811**

### Support Services:

Regional domestic and family violence services provide information, referral, advice, counselling and support to women experiencing domestic and family violence. Many of these services also have information on counselling services available for people who use domestic and family violence in relationships.

To find your nearest support service, call the Domestic Violence Hotline or visit

<http://qlddomesticviolencelink.org.au>

Scan this code using a QR reader app on your smartphone to access the full range of fact sheets.



The Queensland Centre for Domestic and Family Violence Research receives defined term funding from the Queensland Department of Communities, Child Safety and Disability Services to undertake research and develop educational resources pertaining to domestic and family violence in Queensland.