

Orders & Breaches



DOMESTIC VIOLENCE ORDERS

What is a DVO?

A Domestic Violence Order (DVO) is a civil order that contains a series of 'orders' which are intended to protect the aggrieved from the alleged domestic/family violence caused by the respondent. These orders seek to protect the aggrieved from future domestic violence from the respondent.

Who is protected by a DVO?

A DVO is intended to protect people in a range of relationships.

Intimate personal relationships include:

People who are married; in a de facto relationship; engaged, including couples betrothed under traditional cultural practice; couples that are not de facto, engaged or married, if the aggrieved can demonstrate they are/were in a relationship; or parents of a child, regardless of whether they have ever had a relationship.

Family relationships include: People who are or were relatives by blood, marriage or because of a de facto relationship and people who regard themselves as being a relative of another person; it also includes cultural considerations of family.

Informal care relationships include: Non-commercial arrangements where a person depends on another person for help with daily living activities, such as cooking, eating, bathing, going to the toilet.

TERMS USED IN THIS DOCUMENT

Domestic and/or family violence: When one person in a relationship acts abusively, dominating and controlling their partner, family member or a person who depends upon them for help with their daily living activities (their unpaid carer). 'Abuse' can be physical, non-physical or sexual. Children can also be affected by domestic violence if they hear or see the violence, or by the consequences of the violent behaviour.

Aggrieved: The person experiencing domestic and/ or family violence and who will benefit from having a domestic violence order or a police protection notice.

Respondent: The person who is allegedly responsible for the domestic and / or family violence and against whom the domestic violence order or police protection notice is made.

DVO: A DVO (domestic violence order) is a court order, generally made by a Magistrates Court, designed to protect the aggrieved, and their children or others named on it.

Breach: When the respondent has been served with / notified of an order and then disobeys the terms and conditions of that order.

As well as the aggrieved, the following people can be included on, and so protected by, a DVO:

- a child of the aggrieved (including an unborn child) or a child who lives with or regularly visits/spends time with the aggrieved.
- a relative of the aggrieved.
- an associate of the aggrieved (partner; or support person, such as a friend, family member or workmate).

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, 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).



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).
- 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.

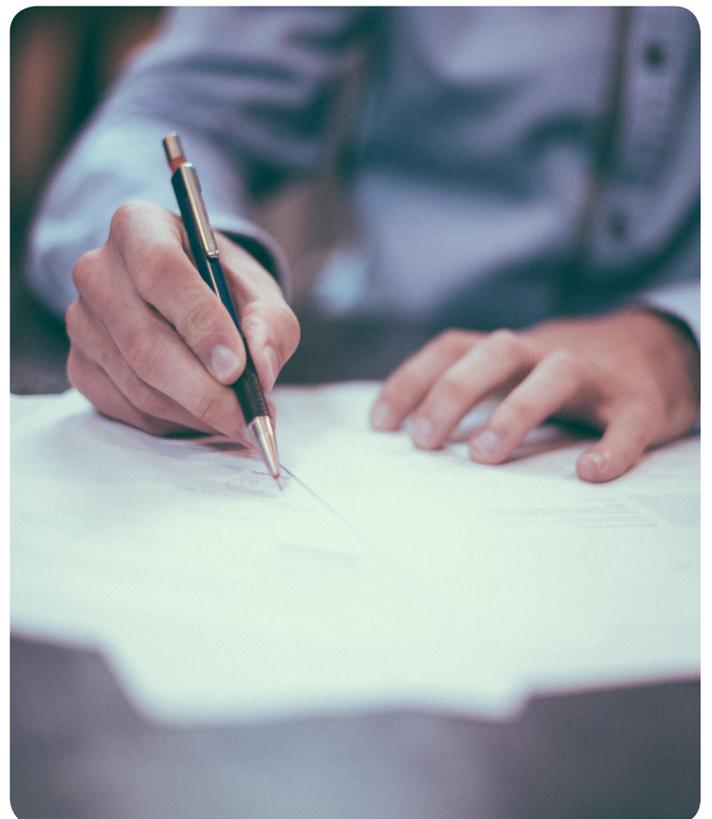
What if the aggrieved needs urgent protection?

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.

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.

Can the aggrieved apply for a DVO if they also have family law orders about their children?

The aggrieved must tell the magistrate if they have existing family law orders as the magistrate may consider family law orders (parenting orders) before granting or varying a DVO. Magistrates may consider changing a family law order if the conditions in the order make the aggrieved, their children or others named in the DVO unsafe; or if there is inconsistency between the two orders. A parenting order will always take priority over the DVO, so it is very important that the aggrieved seeks urgent legal assistance if the DVO and the family law order say different things about the respondent's time with the children.

What can the court do if the respondent has a weapon?

Under the Weapons Act 1990, if a final DVO is taken out against the respondent, their weapons licence is automatically suspended for a period of five years. A respondent to a temporary protection order is prohibited from possessing a weapon for the duration

of that order. If the respondent has used an item (e.g. a cricket bat) to intimidate or control their partner, the court may also consider that item as a weapon and prevent the respondent from keeping it for the duration of the order. Respondents whose job requires them to carry a weapon (e.g. a security guard) are generally exempt from having to comply with the Weapons Act, but the court can prohibit them from possessing a weapon for the duration of the DVO. (Failure to comply with the terms of the DVO is a breach of the DVO and may be a criminal offence under the Weapons Act.)

How long does a DVO last?

The DVO will take effect as soon as the respondent is notified/ served with it. Final DVOs are made for a minimum period of 5 years (except where the court deems that a shorter period is appropriate). The court may also choose to extend the order. If an application is made before the original DVO expires, the court can vary the original protection order and extend it up to an additional two years.

Do all DVOs have the same conditions?

DVOs have standard conditions that are on all orders. These are that the respondent must:

- be of good behaviour toward the aggrieved and any others named in the order; and
- not commit domestic violence against the aggrieved, or any others named in the order; or expose any named children in the order to domestic violence.



Can a DVO have additional conditions?

If the magistrate believes that the aggrieved or a person named on the order needs additional protection and a request has been included in their application, the magistrate can add other conditions such as 'no contact' conditions which, for example, prevent the respondent from:

- remaining in, entering, or coming within a certain distance of specified premises that the aggrieved lives in, visits or stays at (e.g. a workplace)
- approaching or attempting to approach the aggrieved
- contacting the aggrieved, or getting someone else to contact them
- trying to find the aggrieved person themselves, or getting someone else to do so
- going to the children's school or day care centre.

The magistrate can also impose an 'ouster condition', which prevents the respondent from remaining in, entering, or coming within a certain distance of the home the aggrieved and respondent have shared. A 'return condition' allows the respondent to return for a specified period of time (in some cases accompanied by a police officer) to collect their personal possessions, after which they must comply with any no-contact conditions in the DVO.

What happens if the person using the violence takes out a DVO against the aggrieved?

Sometimes when a respondent is served with a DVO they will apply for a DVO against the applicant as a way of continuing their control. When both parties apply for DVOs against one another it is called a 'cross-application'. It is important to get legal advice if the person responsible for the violence applies for a DVO against the aggrieved. The aggrieved can choose to attend court to respond to the allegations,

or a DVO may be granted against them. Where there are cross-applications set for hearing, the magistrate should identify the person/party most in need of protection, based on the evidence provided by all parties.

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.

GOING TO COURT

Does the aggrieved have to go to court?

If the aggrieved has made a private application they must attend all court proceedings. They can attend in person, or make a written request to the court before their court date to appear via phone. If they don't appear in person or by phone, their application may be dismissed. If the police have made an application for a DVO on behalf of the aggrieved (generally after attending the domestic violence incident, or being made aware of it) they will advise them if they are needed in court. Where there are serious safety concerns the police can prosecute the case without the aggrieved being in the court room.

What happens if the aggrieved and respondent meet at court? Will the aggrieved be safe?

If the aggrieved is frightened of the respondent and concerned for their safety when they go to court, they should tell their support service or contact the court before they are required to appear. The court can support the aggrieved to complete a 'Domestic and Family Violence Safety Form' which will be given to security staff and others at the court who are responsible for their safety. In some courts there may be a separate waiting/ safe room where they can wait with their support person/ legal representative until their case is being heard. If so, they can also return to the safe room after the mention/ hearing, while the protection order is being prepared. If support workers are aware of the safety concerns of the aggrieved, they can arrange for them to leave the courthouse before or after the respondent, to protect the aggrieved from possible harassment.

Will the aggrieved need a solicitor?

If the aggrieved doesn't have a solicitor, and it is a private application, the police prosecutor

may represent them at the mention, but if the case goes to a hearing the aggrieved can have either a private or Legal Aid solicitor to represent them. The aggrieved may also obtain court support from a domestic violence service or bring their own support person, who would not be allowed to speak for the aggrieved unless they made the application on behalf of the aggrieved.

If the application goes to a Hearing, will the aggrieved need to tell the court about the domestic violence?

Yes. The magistrate will want to hear why the aggrieved wants a DVO and also listen to the respondent's response to the application.

- The magistrate may ask the aggrieved to expand on the information already provided in their application.
- Any witnesses will also have to attend court and answer questions from the magistrate and respondent, or the solicitor for the aggrieved.
- If the aggrieved is frightened or intimidated by the respondent they can request that the respondent not personally question them. In addition, the court can set up a barrier so the aggrieved cannot see the respondent, or arrange to pre-record the evidence or transmit it from another room.
- The respondent is not allowed to personally question any child witnesses.
- Once the aggrieved and their witnesses have given evidence, the aggrieved or their solicitor is free to question the respondent and their witnesses.
- Based on the 'balance of probabilities', the magistrate will make a decision about whether a DVO should be made.
- If the respondent does not attend the hearing, the magistrate can either: still make the order; or if the hearing is adjourned (postponed), issue a warrant for the respondent.

BREACHES

How can an order be breached?

An order can be breached if the respondent does not obey the conditions of the order with which they have been served/ of which they have been notified. That is, for example, if the respondent:

- uses domestic violence against the aggrieved, or exposes children named on the order to domestic violence
- does not comply with the terms of a 'no contact' order, for example by:
- using phone, text, email or social media to contact the aggrieved, their children and others named on the order
- writing a letter to anyone named on the order
- asking a friend or family member to try to locate or contact the aggrieved
- following the movements of or approaching anyone protected by the order
- returning/entering or approaching the house of the aggrieved inside the distance specified in the order.

It is important that the aggrieved understands the DVO and what counts as a breach of the order.

What happens if there is a breach of a condition on the order?

Failing to comply with a condition on a DVO is a criminal offence and police can charge the respondent with a 'breach' of the order. The aggrieved can inform the police as soon as the respondent breaches the order. If the actions of the respondent also amount to another criminal offence, such as grievous bodily harm, and there is sufficient evidence, they can also be arrested and charged with that offence. If the respondent is convicted of the breach, the court can:

- send them to prison for up to three years (first breach offence)
- put them on a good behaviour bond
- order them to do community service or fine them.

Does the aggrieved need evidence that the respondent is in breach of the order?

Yes. However, only police can deal with breaches of a DVO, so if the aggrieved thinks the respondent has breached their DVO they can write down the details of the breach and let police know straight away. Examples of evidence that can be provided about the breach include:

- text messages from the respondent
- dated digital photographs that have been taken of the respondent entering the property of the aggrieved
- telephone messages from the respondent and
- posts directed to the aggrieved or their children on social media sites.

It is recommended that the aggrieved has a copy of their DVO handy so police can check the conditions, however all DVOs are recorded on police databases.

How many times can the respondent breach the order before being sentenced to a term of imprisonment?

Once charged, the decision about the severity of the penalty for each breach is up to the magistrate. Their decision will be influenced by factors such as how often or severe the breaches have been and if the respondent has a criminal history. Breach cases can sometimes take up to a year to be heard, and the penalty decided, in court. If the breach involves a serious crime, such as grievous bodily harm, the respondent can be held in detention until a sentence is handed down. If they are released on bail until the case is heard, the aggrieved can seek a variation of their DVO if there is a need to increase the protection they already have. In some case bail conditions are granted which may be additional to existing conditions on a DVO. Bail conditions usually remain in place until the respondent next appears in court, at which time they can be removed or suspended.

Will the aggrieved breach the DVO if they agree, under pressure from the respondent, to do something for them (e.g. drive them to work)?

No, the DVO is not against the aggrieved and it is the respondent who may have breached the DVO by both contacting the aggrieved and using intimidating behaviour. The DVO is in place to keep the aggrieved and their children safe and it is important that they understand what it says and means.

It is also important to note that certain behaviours and pressure from the respondent may be employed as a way of asserting control over the aggrieved. Aggrieved persons should seek professional advice if they are concerned about such instances.

LEGAL SERVICES

Legal Aid

www.legalaid.qld.gov.au

or call 1300 651 188

Community Legal Centres

www.qails.org.au

Queensland Law Society

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.



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