

# Going to Court



## 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, nonphysical 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.

## Does the aggrieved have to go to court?

If the aggrieved has made a private application they must attend court, either in person, or via phone (if they have received court permission). 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 they will advise them if they must attend. Where there are safety concerns

the police can prosecute the case without the aggrieved present.

## What happens if the aggrieved and respondent meet at court?

If the aggrieved is and/or concerned for their safety when attending court, they should tell their support service or contact the court before they are required to appear. The court can help the aggrieved complete a 'Domestic and Family Violence Safety Form' which will be given to security staff. In some courts there may be a separate room where they can wait until their case is heard. 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.

## 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. When there are two applications before the court, naming each party as both an 'aggrieved' and a 'respondent', 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 attend court to respond to the allegations. If they do not attend, a DVO may be granted against them. Where there are cross-applications, the magistrate should identify the person most in need of protection, based on the evidence provided.

## Will the aggrieved need a solicitor?

If the aggrieved doesn't have a solicitor the prosecutor may represent them at the mention, but if the case goes to a hearing the aggrieved should have a private or Legal Aid solicitor to represent them. The aggrieved may also obtain court support from a domestic violence service or 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. All evidence must be provided to the court by way of affidavits, and any witnesses who make formal statements must attend.

- The magistrate may ask the aggrieved to expand on the information in their application.
- Any witnesses will also have to attend court and answer questions
- If the aggrieved is frightened by the respondent they can request that the respondent not personally question them. 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 decide whether or not to grant a DVO
- If the respondent does not attend the hearing, the magistrate can either: make the order; or if the hearing is adjourned (postponed), issue a warrant for the respondent.

## What if there are current family law orders in place for children?

The aggrieved must tell the magistrate if they have existing family law orders as the magistrate may consider these 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 orders. A parenting order will take priority over the DVO, so it is important that the aggrieved seeks legal assistance if the DVO and the family law order say different things about the respondent's time with the children.



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 Child Safety, Youth and Women to undertake research and develop educational resources pertaining to domestic and family violence in Queensland.