



Domestic Violence and Family Law: Legal intersections

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Acknowledgement of First Nations People





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The discussion/stories of domestic and family violence may be triggering for some members of the audience. Please be mindful. If you wish to seek further support, please contact 1800 RESPECT (1800 737 732) or discuss it with us further.

Overview

- About Women's Legal Service
- DFV Protection Act 2012 (Qld)
- DVOs and parenting arrangements
- Children's Safety – the legal context
- Family Law Act 1975 (Cth)
- Q & A



Women's Legal Service Qld

Women's Legal Service is a specialist Community Legal Centre providing free legal and social work support to Queensland women.



We provide assistance in Family Law and Domestic Violence matters including:

- **Separation**
- **Divorce**
- **Parenting arrangements**
- **Child support**
- **Child protection**
- **Some Sexual Assault matters**

Our priority is helping women who are experiencing violence or disadvantage.

Our Queensland wide programs are targeted to the most vulnerable.

Domestic & Family Violence: Legal Framework

- Domestic and Family Violence Protection Act 2012 (Qld)
- Criminal Code 1899 (Qld)
- Residential Tenancies and Rooming Act 2008 (Qld)
- Child Protection Act 1999 (Qld)
- Victims of Crime Assistance Act 2009 (Qld)

- Family Law Act 1975 (Cth)
- Migration Regulations 1994(Cth)

As practitioners it is important to know **when** clients may need legal advice, and where best to refer

Domestic and Family Violence Protection Act 2012 (Qld)



Domestic and Family Violence Protection Act 2012

Three main objects:

1. Maximise the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption to their lives.
2. Prevent or reduce domestic violence and the exposure of children to domestic violence.
3. Ensure that people who commit domestic violence are held accountable for their actions.



Domestic Violence Protection Orders

A Domestic Violence Order (DVO) is a civil order made in the Magistrates Court.

Applications for DVOs can be made by police or privately.

Police can impose Police Protection Notice (PPN) with immediate effect prior to applying for a DVO.

Form DV3
QUEENSLAND
DOMESTIC AND FAMILY VIOLENCE
PROTECTION ACT 2012
Section 37
PROTECTION ORDER

Court: MAGISTRATES COURT
Place: SUBURB NAME
Date Order Made: 01/01/2019

Applicant (Police):
Respondent: Mary SMITH
Aggrieved: Joe BLOGGS
Jane BLOGGS

Nationally Recognised DVO

It is ordered by consent without admissions that:

- (1) The respondent must be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved.
- (2) The respondent is prohibited from remaining at, entering or attempting to enter, the premises where the aggrieved lives.
- (3) The respondent is prohibited from contacting or attempting to contact or asking someone else to contact the aggrieved.
- (4) The respondent is prohibited from following or attempting to contact or asking someone else to contact the aggrieved when the aggrieved is at any place.

The respondent was present in Court when this order was made.
UNLESS OTHERWISE ORDERED THIS ORDER CONTINUES IN FORCE TO AND INCLUDING 27/03/2024.

Signature
Magistrate/Judicial Registrar/Clerk of the Court/Proper Officer
Date: 01/01/2024

File Number: MAG-DV 00012345600
LFR: SUBURB 00123 45123
Order Number: 00001110000

Accurate at time of printing

Domestic Violence Protection Orders

Domestic Violence Protection Order

- Standard length is 5 years
- Can only be made once Respondent is served with Application
- Can be made by Respondent consent (inc. implied by absence) or by Magistrate finding of fact following Hearing

Temporary Protection Order

- Can be made Ex Parte (without Respondent aware or present)
- Can be made between Court dates, or while awaiting Police to serve Respondent with Application

Weapons must be relinquished for the life of the Order

DVOs are recognised and enforceable interstate (Since Nov 2017)

DVO Conditions

Mandatory Condition - the 'respondent' must be of good behaviour and not commit acts of domestic violence toward the 'aggrieved'.

Additional conditions can be sought including to:

prohibit:

- Approaching within a stated distance
- Approaching/entering/remaining at any place the aggrieved resides, works or frequents
- Contacting/attempting to contact/getting someone else to contact
- Locating/attempting to locate/asking someone else to locate
- Attending any certain place associated with the child (e.g. school or daycare).

and **direct:**

- Respondent to vacate residence ("ouster")
- Return of essential property
- Voluntary Intervention Order for respondent (not common)

Court must be satisfied of following pursuant to s37

A court may make a protection order against a person (the *respondent*) for the benefit of another person (the *aggrieved*) if the court is satisfied that—

- (a) a **relevant relationship exists** between the aggrieved and the respondent; and
- (b) the **respondent has committed domestic violence** against the aggrieved; and
- (c) the protection order is **necessary or desirable** to protect the aggrieved from domestic violence.

Which relationships are protected? s13

Intimate personal relationship

- Married, de facto, engaged, couple relationships
- Includes teenagers under 18 in intimate relationships

Family relationship

- Family relatives, adult siblings, parents etc
- Does NOT include children under 18

Informal care relationship

- One person is dependant on another for assistance with daily living

Definition of Domestic Violence s8

Domestic violence means behaviour by a person towards another person with whom the first person is in a relevant relationship that—

- (a) is physically or sexually abusive; or
- (b) is emotionally or psychologically abusive; or
- (c) is economically abusive; or
- (d) is threatening; or
- (e) is coercive; or
- (f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.

Necessary or Desirable s37(1)(c)

“the protection order is necessary or desirable to protect the aggrieved from domestic violence”

NOTE - Necessary OR desirable – both not required: an order may be necessary for safety but not desired by the Aggrieved.

- Meaning intended to be wide however, the need for protection must still be supported by evidence.
- Court must consider risk of future domestic violence in the absence of an order.
- Court must assess the need to protect the Aggrieved in the absence of an order.
- Court must consider necessary or desirable with regard to principles of the act.

Children and DVOs

Children can be named on DVOs as ‘protected persons’ (s53)

- If the court is satisfied that it is necessary or desirable to protect the child from *associated domestic violence* (s9) or *exposure to domestic violence* (s10) by the respondent.

The court can impose a condition to limit contact between a parent and child (s62)

- *only to the extent necessary for the child’s safety, protection and wellbeing.*

DVOs and parenting arrangements

- When making a TPO or DVO, the Magistrates Court must give regard to family law orders (parenting orders). s78
- Where there are inconsistencies between a DVO and a Parenting Order, the Parenting Order will override.
- If the family law order is inconsistent with a proposed DVO, the Magistrates court can consider exercising power under, *Family Law Act 1975 (Cwlth)*, section 68R to revive, vary, discharge or suspend the family law order.
- Despite existence of s78 of DFVPA 2012 (Qld) and s68R FL Act 1975 (Cwlth) – very few state and territory courts exercise their power under s68R, preferring to leave family law matters to the FC&FCoA.

DVOs and parenting arrangements

To avoid barriers to accessing family dispute pathways and inconsistencies between DVOs and parenting orders, the Court commonly uses a 'family law exception'.

Wording for exceptions vary – some exceptions are more strict.

Example – “The respondent is prohibited from following or approaching the named child when at any place.... EXCEPT when having contact with a child or children as set out in writing between the parties or in compliance with an order of a Court”

Form DV3
QUEENSLAND
DOMESTIC AND FAMILY VIOLENCE
PROTECTION ACT 2012
Section 37
PROTECTION ORDER

File Number: MAG-00220092/20(8)
LFR: IPSW-MAG-00015035/20
Order Number: [REDACTED]

Court: MAGISTRATES COURT
Place: IPSWICH
Date Order Made: 13/04/2021

Respondent: [REDACTED]
Aggrieved: [REDACTED]

Named Person/s Protected by this Order:
CHILD OF THE AGGRIEVED [REDACTED]

Nationally Recognised DVO

It is ordered by consent without admissions that:

- (1) The respondent must be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved.
- (2) The respondent must be of good behaviour towards the named person and not commit associated domestic violence against the person and not expose the named child/ren to domestic violence.
- (3) The respondent is prohibited:
 - from remaining at;
 - entering or attempting to enter;
 - approaching to within 100m of; the aggrieved's or named child's usual place of residence
- (4) The respondent is prohibited from contacting or attempting to contact or asking someone else other than a lawyer to contact the aggrieved or named child.
Except when having contact with a child or children as set out in writing between the parties or in compliance with an order of a court.
- (5) The respondent is prohibited from following or approaching to within 100m of the aggrieved when at any place.
Except when appearing personally before a court or tribunal
Except when attending an agreed conference, counselling or mediation session.
Except when having contact with a child or children as set out in writing between the parties or in compliance with an order of a court.
- (6) The respondent is prohibited from following or approaching the named child when at any place.
Except when having contact with the child as set out in writing between the parties or in compliance with an order of a Court.

The respondent was present in Court when this order was made.

UNLESS OTHERWISE ORDERED THIS ORDER SHALL TAKE EFFECT FROM AND INCLUDING 12/04/2026.

Magistrate/Judicial Registrar/Clerk of the Court
Date: [REDACTED]

Printed: 13/04/2021 04:18 PM
Accurate at time of printing
Form DV3 Version 2, 25/11/2017

Page: 1 of 1

Form DV3
QUEENSLAND
DOMESTIC AND FAMILY VIOLENCE
PROTECTION ACT 2012
Section 37



File Number: MAG-00220092/20(8)
LFR: IPSW-MAG-00015035/20
Order Number: C [REDACTED]

PROTECTION ORDER

Court: MAGISTRATES COURT
Place: IPSWICH
Date Order Made: 13/04/2021

Respondent: [REDACTED]
Aggrieved: [REDACTED]

Named Person/s Protected by this Order:

CHILD OF THE AGGRIEVED [REDACTED]

Nationally Recognised DVO

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 - from remaining at;
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 - approaching to within 100m of, the aggrieved's or named child's usual place of residence
- (4) The respondent is prohibited from contacting or attempting to contact or asking someone else other than a lawyer to contact the aggrieved or named child.

Except when having contact with a child or children as set out in writing between the parties or in compliance with an order of a court.

- (5) The respondent is prohibited from following or approaching to within 100m of the aggrieved when at any place.

Except when appearing personally before a court or tribunal.
Except when attending an agreed conference, counselling or mediation session.
Except when having contact with a child or children as set out in writing between the parties or in compliance with an order of a court.

- (6) The respondent is prohibited from following or approaching the named child when at any place.

Except when having contact with the child as set out in writing between the parties or in compliance with an order of a Court.

The respondent was present in Court when this order was made.

UNLESS OTHERWISE ORDERED THIS ORDER CONTINUES IN FORCE TO AND INCLUDING 12/04/2026.

Magistrate/Judicial Registrar/Clerk of the Court/Proper Officer
Date: 13/04/2021



When can DVOs help with Parenting Disputes

- A strong DVO can strengthen the position of Aggrieved party in parenting negotiations. Parties don't have to agree
- Can increase safety during changeovers
- Assist with encouraging amicable communication between parties

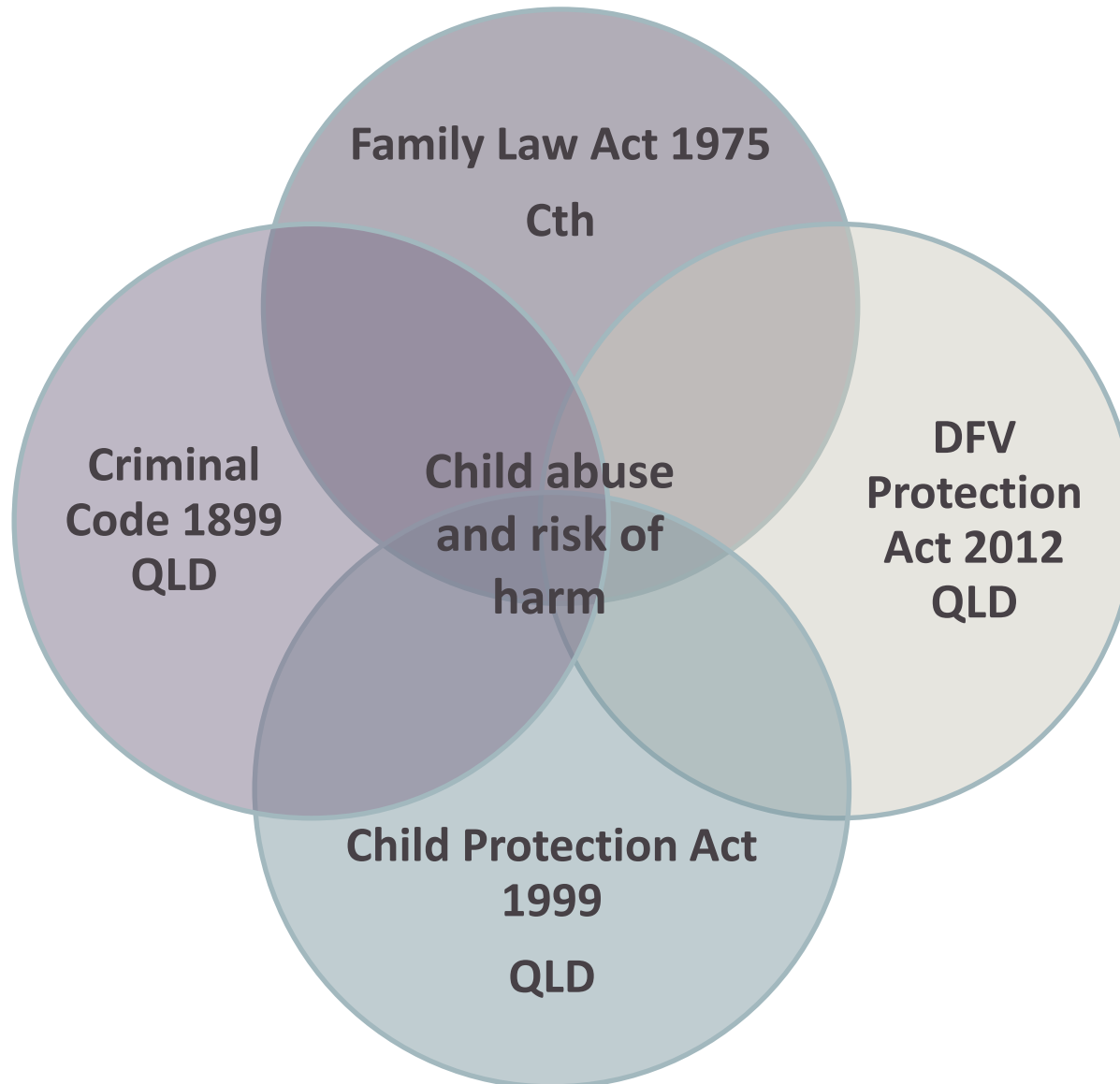
Tensions with DVOs and Parenting Disputes

- DVO may not prevent one party from taking the children without agreement (eg, Mandatory Condition).
- Magistrates may be reluctant to make DVOs / some conditions if the conflict appears to centre on parenting disputes.
- QPS will not intervene if issues relate to parenting disputes unless they assess that the children are at immediate risk.
- A DVO itself is not enough to prove DV in the FC&FCoA – need to prove domestic violence AND the risk / impact to the children.

Harm and Risks To Children: Legal Context



What about children's safety?



Family Law Act 1975 Cth

Federal Circuit Court & Family Court of Aust.

Private parties initiate proceedings.

Parents must be separated.

Purpose – decide who children live with, how much time they spend with each parent, major decision making – when parents cannot agree. Children's safety is paramount.

NOT enforceable by QPS

Criminal Code 1899 QLD

Magistrates Court / District Court

Supreme Court (depends on seriousness)

State initiates prosecutions (QPS / DPP)

Victim/survivors are 'witnesses' – not 'parties' to legal proceedings.

Purpose – Offender punishment and accountability. Protection of community.

Must meet criminal standard of evidence

Child abuse / risk of harm

Domestic and Family Violence Protection Act 2012 QLD

Specialist DFV Court / Magistrates Court

State (QPS) or Private parties initiate proceedings

Purpose - safety and protection of Aggrieved (can include children) **NOT about where children live**

or decisions about children

Child Protection Act 1999 QLD

Children's Court (Magistrates Court)

State initiates proceedings (DOCS)

Purpose – Protection of children when both parents are not willing or able to care for their children.

Family Law Act 1975 Cth

Parenting Orders include where, and with whom the children live, and who makes major decisions. If a parent is unsafe -time with children may be stopped, restricted and/or supervised. Interim orders may include activities such as drug tests and attend counselling. 'Parental Responsibility' may be limited or removed.

Criminal Code 1899 QLD

If convicted, offenders can be fined or incarcerated. Bail, Probation, Parole conditions can prohibit offenders from contacting, approaching victims, their home and school.

Legal Outcomes

Domestic and Family Violence Protection Act 2012 QLD

DVO conditions may prohibit Respondents from contacting, approaching a child, their home and/ or school.

Family law exceptions apply (in most cases)

Child Protection Act 1999 QLD

The Dept of Child Safety may remove children from parents, order that contact is supervised. Parents may be required to complete activities such as drug tests and attend counselling. The Dept may decide where, and with whom the children live and other major decisions.

Family Law Act 1975 (Cth)

- Children and Parenting
- Property Settlement
- Divorce



Separation & DV: Leaving with children

Every situation is different

Get legal advice!



Will he take legal steps if I don't let him see the kids

Is there a safe way for the kids to see their Dad

What if he doesn't return them

I have a responsibility to keep children safe

Is it safe to talk to him about the children

I'm supposed to make joint decisions about the kids

Separation & DV: Leaving with children

Important to understand legal obligations and options

Parents have a responsibility to keep children safe from harm
AND a responsibility to enable a meaningful relationship with
the other parent

Withholding children from the other parent is not viewed
favourably by the FC&FCoA in the future unless there are
very compelling and tangible reasons, eg, fears for
immediate health and safety of the child/ren

Parenting after Separation

If parents agree - Where there is no dispute, there is no obligation to formalise agreements.

If parents can't agree - options

- Informal negotiations
- Any agreements confirmed in writing
- Do not ignore mediation requests or court documents

Mediation is the first step in legal process

- Mediators role is to assist parties reach agreement
- May not be appropriate in some DV cases (60i Certificate)

Court Proceedings – FC&FCoA

- Note PAP before filing
- Judge will make Parenting Orders
- Court Proceedings typically take years to finalise

Types of Agreements / Orders

Informal agreement – a verbal or unwritten agreement between parties.

Parenting plan – written signed agreement between the parties

- Agreement may have been made at mediation.
- Parenting plans are flexible (can be changed easily) but are not legally enforceable.

Consent Order – a parenting order made by consent. Application can be filed with Court , without need for litigation, or consent orders can be made after proceedings have commenced. Legally enforceable.

Parenting Order – a Court order made following a hearing. Decision is made by Judge. Legally enforceable. (Note: only 7% of applications are finalised by judicial determination).

Terminology

Term ***custody*** is no longer used in the legislation.

Matters about ***parental responsibility*** are separate to decisions about who the child/ren ***lives with*** and how much ***time spent with*** each parent.



Parental responsibility

Parents do not have '**rights**' to their children, they have '**responsibilities**'. Children have rights.

What is parental responsibility

- Duties and responsibilities to ensure that children are cared for and safe.
- Long term decision making – where the children live, go to school, medical treatment, religion

Presumption of equal shared parental responsibility

Where there are no Parenting Orders stating otherwise, it is presumed that both parents have equal parental responsibility.

- This means parents are obliged to consult each other about important long term decisions about the children.
- Parental responsibility does not mean equal time.

Time considerations

If **equal shared parental responsibility** is ordered, the Court must *consider*:

Equal time (s65DAA): one week with one parent, second week with one parent or some version of this; or

Substantial and significant time: live predominantly with one parent and some week day time and some weekend time with the child; or

Other time: for example short visits or visits supervised by a third party.

But only if reasonably practicable and only if it is in the child's best interest

What is in a child's best interest s60CC

Primary considerations are:

- The benefit to the child of having a meaningful relationship with both parents
- The need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

The court gives greater weight to the need to protect from harm s60CC (2A)

Best interests of the child : additional considerations

- The views of the child (the child's age and maturity are important factors)
- The child's relationship with each parent and other significant people
- Whether each parent has fulfilled their parenting responsibilities
- Whether parents have participated in spending time or communicating with the child
- Whether parents are financially supporting the child incl. child support
- The likely effect on the child of any change in circumstances
- Practical issues of distance and expense of any proposed arrangements
- How well each parent is able to look after the child and meet their needs
- The maturity, sex, lifestyle and background of the child and their family
- Cultural identity and the likely impact of an order on their right to enjoy their culture
- Parental attitudes to parenting and responsibilities
- **Whether there has been any family violence or family violence orders made**
- Whether it is best to make an order that is the least likely to lead to more court proceedings
- Any other relevant factors.

If there are safety concerns for children spending time with a parent

To address safety concerns while children spend time with parents the FC&FCoA may:

- children's contact centres
 - Supervised visits
 - Facilitated change overs
- Supervised time by a suitable third party (family member or mutual friend) – only if appropriate.
- Reduce contact between parents by having changeovers occur at school
- Parenting Courses
- Men's behavioural change program
- Drugs/Alcohol programs and urine/ hair follicle testing

Questions

Women's Legal Service Queensland

- Legal Helpline: 1800 957 957

www.wlsq.org.au

Legal Aid Queensland

- Legal Information / Self Referral 1300 65 11 88
- Legal resources, factsheets, YouTube

www.legalaid.qld.gov.au

Mediation Services

- The Family Relationship Advice Line 1800 050 321
- Relationships Australia 1300 364 277



www.wlsq.org.au