

LEGAL MATTERS

Understanding DVOs, the Court System, Servings and Breaches ...



Legal Matters and DVOs

Legal Matters

Our Court Support program allows our experienced and specialist workers to provide information and support the aggrieved in the application process for a Domestic Violence Protection Order (DVO). While we are not a Legal Support service (and therefore cannot provide legal advice), we understand the complex and distressing situation of going to court, and aim to make the process less daunting. We can refer women to Legal Services, who understand Domestic and Family violence, for professional assistance in issues such as Property and Family Matters. and/or your partner (the perpetrator) are living, and preferably in a major regional centre.

Who the law protects ...

The Domestic Violence (Family Protection) Act 2012 protects people from their spouse in situations of domestic violence. The law can also protect the relatives and associates (family, friends and work-mates) of the aggrieved spouse

The person from whom the aggrieved wants protection from is called the **respondent**.

The person who wants protection is called the **aggrieved**.

How to apply for a Domestic Violence Order (DVO) ...

You can apply for a Protection Order yourself or get a police officer, solicitor or authorised person (friend, relative, community worker) to apply for you. Applications for Protection Orders are available at all Magistrates Courts and Legal Aid Offices, or are available online on the Queensland Courts website. WAVSS Staff are also available to help with the application process.

The application will ask for details about the history of domestic violence, recent incidences of abuse and protection conditions sought.

There are four basic conditions which state that the respondent must be of good behaviour towards the aggrieved spouse and their relatives / associated; and that the respondent must not possess a weapon and that their weapons licence will be cancelled. An aggrieved spouse may hold an order with the basic conditions while they are still residing with the respondent. Other conditions can be applied for to restrict contact the respondent may have with the spouse, her relatives / associated and children.

For an in-depth guide to completing an application for a protection order, please google 'Guide to completing an application for a protection order' or ask a WAVSS Staff member for a copy.



After you lodge the application ...

The court will grant you an urgent temporary order or you will be given a date to appear in court in about three to four weeks. A permanent order can only be granted after the respondent is served with the application. If the respondent agrees to the order, the magistrate may issue an order for two years. If the spouse opposes the application there will be a contested hearing at another date.

While a DVO is part of the civil court, a breach of the order is a criminal offence, the respondent can be charged with a breach if they knowingly disobey any of the conditions of the order.

Serving of the order ...

The court will grant you an urgent temporary order or you will be given a date to appear in court in A protection order must be served on the Respondent for it to be effective.

If it is not served:

- The respondent cannot be charged with a breach; and
- A final Protection Order cannot be made

Important: Check that the order has been served by contacting the Police Station nearest to the respondent's address.

If the respondent is not served, you may be able to help the police:

- Inquire if there are any problems with service
- Provide the police with more information about other addresses at which the respondent may be found
- Give the police the particular times that the respondent may be found at home or at the other addresses.



About Breaches

What is a breach?

A breach occurs when the respondent, either personally or through another person, does any act which disobeys any of the conditions of the Order. The Respondent needs to have been served with the order and also know about the conditions on the Order before s/he can be charged with a breach.

Some examples of breaches are:

- Hitting you, pushing you
- Possessing a weapon
- Damage to your property, including hurting your pets
- Harassing you – eg. telephoning you constantly, coming to your home or work place uninvited.
- Threatening to harm you
- Harassing or threatening to harm any aggrieved persons named in the Order.

If the respondent is breaching your Protection Order and you want the police to investigate with a view to charging the respondent with a breach:

1. Record Details of the Breach: write down what has happened, when and where, number of times it happened, names of witnesses.
2. Report the Breach: Go to a police station near you and report the breach. Make sure that you record the name of the Police Officer to whom you spoke.
3. If the Police do not Act: It is important that if the police do not act and you think they should, that you contact the Domestic Violence Liaison Officer at the police station concerned, or the Officer in Charge of the station and discuss what has been happening.

Note: You may need to go back to Court and change or add extra conditions if the police consider that your Order is inadequate to charge the respondent with a breach. This is called making an Application to Vary your Order. The Domestic Violence Assistance Program (DVAP) at the Court House can assist you with your application. Phone no: 3807 7622

When a respondent is charged with a breach ...

Once charged with a breach of a Protection Order by the police, the respondent is arrested and brought before a Magistrate. If the respondent pleads guilty s/he is sentenced. The degree of seriousness of the breach and the number of breaches that have been committed, determine the sentence that is given by the court. For the first breach, the respondent will probably receive a fine or be ordered to attend a perpetrators program.

After repeated breaches, the respondent may get a prison sentence. If the respondent pleads not guilty, the matter will be dealt with at a Hearing (Trial). You will be required to come to the Trial to give evidence.



Ideas for coping with Court

- 1 — Your job is to tell the truth about what you remember happened.
- 2 — Speak in a big voice so that the person farthest away from you can hear.
- 3 — Think about the questions asked. Take your time before answering.
- 4 — Make sure you understand the questions. If you don't know what the person is asking you, then say you do not understand. If you don't understand the whole question or don't hear the question clearly, speak up and say so.
- 5 — You do not have to look at the defendant or the defence lawyer.
- 6 — If you are worried about looking at the defendant, decide on someone / something else to look at, for example the magistrate or the bench in front of the lawyer.
- 7 — If you are nervous, take deep breaths and answer questions slowly.
- 8 — You may ask to go to the toiler or for a glass of water.
- 9 — You don't have to remember everything. If you can't remember the answer to a question, just say "I don't remember". It is better to say this than to make something up. No one expects you to remember everything after such a long time.
- 10 — If you don't want the accused to know your address you can ask to write it down and give it to the magistrate instead of saying it out loud.
- 11 — The people questioning you might not look at you when they ask you questions or they might speak to you in a voice that seems to be loud or angry. You are not in trouble and the person is not really angry with you.
- 12 — If they say "I object", this does not mean they are angry with you or that you have made a mistake. They are arguing about the law.

Credit: Nothing But The Truth – Court Preparation Handout 6

