



**Community  
Legal Centres  
Queensland**

# Building Capacity: Domestic Violence Best Practice

## Webinar 1: Domestic Violence Law & Practice in QLD

29 November 2018

# Acknowledgement of country

*Community Legal Centres Queensland acknowledges the traditional owners of the land on which we are holding this presentation, the Turrbul and Jaggara people.*

*We pay our respects to their elders, past, present and emerging, and acknowledge the important role Aboriginal and Torres Strait Islanders continue to play in our society.*

*As this presentation is being viewed throughout Queensland, we also pay respect to the traditional owners of the land throughout the country and extend a warm welcome to any First Australians listening to this presentation.*

*We also acknowledge the disproportionately high rates of domestic violence experienced by Aboriginal and Torres Strait Islander peoples and the additional challenges this creates in responding to this issue.*

# About this series of webinars

This series of webinars is part of a program provided by Community Legal Centres Queensland with funding provided by the Queensland State Government's Victim Services Funding Program: Building Capacity 2018-2019.

The program will include webinars run in late 2018 and early 2019, a written toolkit to be circulated by mid 2019, and establishment of a peer mentoring network.

The purpose of the program is to build capacity in Queensland's community legal centres staff and volunteers to use best practice in identifying domestic violence issues, working with clients experiencing domestic violence and relevant agencies, and supporting workers in this area.

# Important information

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# Important information

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# Domestic Violence Law & Practice in QLD

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# Aim of this webinar & content

This webinar will summarise the essentials of Queensland's domestic violence legislation.

This webinar will address:

- how is domestic violence defined?
- who can make an application for a domestic violence order?
- what is the basis for a temporary and final domestic violence orders?
- where there are cross-applications, how does the court deal with them?

We will use case studies to explain how the legislation may be applied in practice.

# What is the relevant legislation?

- In QLD, the Act which deals with the making of Domestic Violence Orders (as well as breaches) is:

*Domestic and Family Violence Protection Act 2012*

- It is also vital to be familiar with:

*Domestic and Family Violence Protection Regulations 2012*

&

*Domestic and Family Violence Protection Rules 2014*



# Who can make an application for a protection order?

- See section 25 of the Act.
- Only the following persons can apply for a protection order –
  - Aggrieved – i.e. the person who is sought to be protected
  - Authorised person for the aggrieved
    - An adult authorised in writing by the aggrieved to appear on behalf of the aggrieved
    - An adult whom the Court believes is authorised by the aggrieved to appear on behalf of the aggrieved even though the authority is not in writing
  - Police officer
  - A person acting under another Act for the aggrieved (eg. guardian or attorney)
- **Note** – a child may be an aggrieved (or respondent), however only if there is an intimate personal relationship or an informal care relationship between the child and the respondent/aggrieved. So there can be no application if the child and respondent/aggrieved are in a family relationship (ie a relative).
  - We will discuss these relationship types shortly.

# Applying for a protection order

- Leaving aside the use of Police Protection Notices by the Police (see Part 4 of the Act re Police functions & powers), the applicant must make a written application for a protection order.
- Form DV01 – Application for a Protection Order.  
[https://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0006/162168/dva-f-1.pdf](https://www.courts.qld.gov.au/_data/assets/pdf_file/0006/162168/dva-f-1.pdf)
- In addition to having the power to make a protection order where an Application for a Protection Order (DV01) has been filed, the Court may also make a protection order where:
  - The Court convicts a person of a domestic violence offence; and
    - See section 42 of the Act which allows the Court, on its own initiative, to make or vary a protection order against the offender.
    - Note: s42(4) requires that the offender, prosecution & aggrieved have been given a reasonable opportunity to present and prepare evidence and make submissions.
  - The Court is the Children’s Court hearing a child protection proceeding
    - See section 43 of the Act which allows the Children’s Court to make or vary a protection order against a parent, either on its own initiative or on application.
    - Note s43(5) requires that each party be given a reasonable opportunity to present evidence and to prepare and make submissions.

# Service of an application

- Section 34 requires an Application for a Protection Order to be personally served on the respondent by a Police Officer.
- However, section 36 allows the applicant to seek to have the application listed before service occurs, for the purpose of the Court determining whether a temporary protection order will be made.

# When can the Court make a protection order?

- When deciding whether to make a protection order (ie on a final basis) the Court considers whether the requirements under section 37 of the Act have been satisfied.

## What are the requirements under section 37?

- The 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 **relevant relationship** exists between the aggrieved & respondent; &
  - The respondent has committed **domestic violence** against the aggrieved; &
  - The protection order is **necessary or desirable to protect** the aggrieved from domestic violence.

All three must be satisfied before the Court can make a protection order.

# When can the Court make a protection order?

- We will now discuss each element separately, that is...
  - ❑ The definition of a **relevant relationship**
  - ❑ The definition of **domestic violence**
  - ❑ The consideration for determining whether it is **necessary or desirable to protect** the aggrieved from domestic violence

# What is a 'relevant relationship'?

- See Division 3 of Part 2, sections 13 – 20 of the Act.
- Section 13 defines what a 'relevant relationship' is & is the starting point when determining whether the aggrieved is in a relevant relationship with the respondent.

## How does section 13 define a 'relevant relationship'?

- A relevant relationship is –
  - An intimate personal relationship; or
  - A family relationship; or
  - An informal care relationship.
- We must then look to the remainder of Division 3 to determine whether the parties have any one of the above relationships.

# What is an 'intimate personal relationship'?

- See section 14 of the Act.
- However, you will need to also refer to sections 15 – 18 to determine whether the parties are in an intimate personal relationship.

## How does section 14 define an 'intimate personal relationship'?

- An intimate personal relationship is –
  - A spousal relationship; or
  - An engagement relationship; or
  - A couple relationship.

# What is an 'intimate personal relationship'?

- We will now discuss each type of intimate personal relationship separately, that is...
  - ❑ The definition of a **spousal relationship**
  - ❑ The definition of **an engagement relationship**
  - ❑ The definition of **a couple relationship**



# What is a 'spousal relationship'?

- See section 15 of the Act, which states that a spousal relationship exists between spouses.
- This section specifically notes that a reference to a spouse includes a de facto partner.
- This section goes on to define a 'spouse' of a person to include:
  - A former spouse of the person; and
  - A parent, or former parent, of a child to the person.
    - Example of a former parent – a birth parent who stops being a parent under the *Surrogacy Act 2010*.

To summarise, a spousal relationship exists between:

- Current and former husband & wife
- Current and former de facto partners
- Parent or former parent of a child

# Who is a 'parent'?

- See section 16 of the Act.
- A parent of a child is:
  - The mother or father; and
  - Anyone else, other than the chief executive (child protection), having or exercising parental responsibility for the child.
- But does not include:
  - A person standing in the place of a parent on a temporary basis;
  - An approved foster carer for the child; or
  - An approved kinship carer for the child.
- A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.
- A parent of a Torres Strait Island child includes a person who, under Island custom, is regarded as a parent of the child.

# What is an ‘intimate personal relationship’ for the purposes of whether the parties were in a ‘relevant relationship’?

- ✓ The definition of a **spousal relationship**
- The definition of **an engagement relationship**
- The definition of **a couple relationship**

Moving on now to the definition of an engagement relationship...

# What is an 'engaged relationship'?

- See section 15 of the Act.
- An engaged relationship exists between 2 persons if the persons are or were engaged to be married to each other, including a betrothal under cultural or religious tradition.

# What is an ‘intimate personal relationship’ for the purposes of whether the parties were in a ‘relevant relationship’?

- ✓ The definition of a **spousal relationship**
- ✓ The definition of **an engagement relationship**
- ❑ The definition of **a couple relationship**

Moving on now to the definition of a couple relationship...

# What is a 'couple relationship'?

- See section 16 of the Act.
- A couple relationship exists between 2 persons if the persons have or had a relationship as a couple.
- S16 (2) states that in deciding whether a couple relationship exists, a Court may have regard to the following:
  - The circumstances of the relationship between the persons, including, for example:
    - The degree of trust between the persons; and
    - The level of each person's dependence on, and commitment to, the other person;
  - The length of time for which the relationship has existed or did exist;
  - The frequency of contact between the persons;
  - The degree of intimacy between the persons.
- S16(3) goes on to state that, notwithstanding subsection (2) the Court may consider various factors (which are listed) in deciding whether a couple relationship exists (includes considerations regarding whether trust/dependence/commitment is/was of the same level, financial dependence, property ownership, existence of joint bank accounts, existence of sexual relationship, exclusivity of the relationship).



# Returning to the definition of a 'relevant relationship'...

- Remember, to establish that the parties have a relevant relationship, we must prove that the parties have:
  - An intimate personal relationship (which we have just covered); or
    - Spousal relationship;
    - Engagement relationship;
    - Couple relationship.
  - A family relationship; or
  - An informal care relationship.
- Moving on now to how the Act defines family relationships and informal care relationships.

# What is a 'family relationship'?

- See section 19 of the Act.
- A family relationship exists between 2 persons if 1 of them is or was the relative of the other.
- A relative of a person or someone who is ordinarily understood to be or have been connected to the person by blood or marriage.
- The Act includes a very helpful list of examples of a person's relatives & former relatives, which can be found under subsection (2) of s19.
- Subsection (4) goes on to provide for a wider definition of a relative which may apply to Aboriginal and Torres Strait Islander people, members of certain communities with non-English speaking backgrounds or people of particular religious beliefs.



# What is an 'informal care relationship'?

- See section 20 of the Act.
- An informal care relationship exists between 2 persons if 1 of them is or was dependant on the other person (the carer) for help in an activity of daily living.
- Please note that this does not include a parent – child relationship.
- Also note that such a relationship does not exist between 2 persons if 1 person helps the other in an activity of daily living under a commercial agreement (which can include help provided by a voluntary organisation where no fee is paid by the person, but excludes arrangements where 1 person receives a pension or allowance for the help provided).

## Important tip!

- It is important to consider options for care/assistance of an aggrieved where the respondent is his/her carer. The making of a DVO may remove the aggrieved's carer from his/her life. This may be there only source of help.



# Case study – relevant relationship

- Anna seeks legal advice from her local CLC regarding an Application for a Protection Order which was served upon her.
- Anna is the respondent to the application.
- The aggrieved is Anna's now former husband's partner, Betty. Anna's ex-husband is Wayne. Wayne is now in a de facto relationship with Betty.
- Anna & Wayne have 2 kids together, who live with them on a week-about basis. Betty assists Wayne with the care of the children, taking them to & from school and conducting the occasional changeover with Anna.
- Betty alleges that she was subjected to DV committed by Anna at a changeover which she attended in place of Wayne. Betty alleges that Anna has been sending abusive emails to her.

Are Anna & Betty in a relevant relationship?

# Case study – relevant relationship (cont.)

## Are Anna & Betty in a relevant relationship?

- Consider the meaning of a relevant relationship under section 13 of the Act. Do Anna & Betty have:
  - An intimate personal relationship?
    - A spousal relationship?
    - An engagement relationship?
    - A couple relationship?
  - A family relationship?
  - An informal care relationship?
- Anna & Betty do not have an intimate personal relationship – they are not, nor were they spouses or de facto partners & they do not have children together (Betty is not a ‘parent’ of Anna & Wayne’s children).
- Anna & Betty do not have a family relationship – they are not relatives of each other (Betty may well be regarded as a step-parent to the children but she does not have a family relationship with Anna).

# When can the Court make a protection order?

- We have now discussed the definition of a relevant relationship.
  - ✓ The definition of a **relevant relationship**
  - The definition of **domestic violence**
  - The consideration for determining whether it is **necessary or desirable to protect** the aggrieved from domestic violence

We will now move onto the definition of domestic violence...

**Remember** – all three elements must be satisfied before the Court can make a protection order.

# What is domestic violence?

- See Division 2 of Part 3, sections 8 – 12 of the Act.
- Section 8 defines what ‘domestic violence’ is for the purposes of this Act.

## How does section 8 define a ‘domestic violence’?

- Domestic violence means behaviour by a person (the 1<sup>st</sup> person) towards another person (the second person) with whom the 1<sup>st</sup> person is in a relevant relationship that:
  - Is physically or sexually abusive;
  - Is emotionally or psychologically abusive;
  - Is economically abusive;
  - Is threatening;
  - Is coercive; or
  - In any other way controls or dominates the 2<sup>nd</sup> person and causes the 2<sup>nd</sup> person to fear for their safety or that of someone else.



# What is domestic violence (cont.)?

- Subsection (2) of s8 goes on to state that domestic violence includes the following behaviour:
  - Causing personal injury to a person or threatening to do so;
  - Coercing a person to engage in sexual activity or attempting to do so;
  - Damaging a person's property or threatening to do so;
  - Depriving a person of their liberty or threatening to do so;
  - Threatening a person with the death or injury or the person, a child of that person or someone else;
  - Threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;
  - Causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;
  - Unauthorised surveillance of a person;
  - Unlawfully stalking a person.
- Note – a person who counsels or procures a 3<sup>rd</sup> person to engage in behaviour that, if engaged in by the person, would be DV is taken to have committed DV.



# What is domestic violence (cont.)?

- Section 9 defines ‘associated domestic violence’ which is relevant when the Court considers whether to name a child, relative or associate on an order.
- Section 10 defines when a child is exposed to domestic violence.
- Section 11 defines ‘emotional or psychological abuse’.
- Section 12 defines ‘economic abuse’.

# When can the Court make a protection order?

- We have now discussed the definitions of a relevant relationship and domestic violence.
  - ✓ The definition of a **relevant relationship**
  - ✓ The definition of **domestic violence**
  - ❑ The consideration for determining whether it is **necessary or desirable to protect** the aggrieved from domestic violence

We will now move onto how the Court determines whether it is necessary or desirable to protect the aggrieved from domestic violence.

**Remember** – all three elements must be satisfied before the Court can make a protection order.



# When is it necessary or desirable to protect an aggrieved?

- See Section 37 (2).
- In deciding whether a protection order is necessary or desirable to protect the aggrieved from domestic violence:
  - The Court must consider:
    - The principles mentioned in section 4; and
    - If an intervention order has previously been made against the respondent and the respondent has failed to comply with the order – the respondent's failure to comply with the order; and
  - If an intervention order has previously been made against respondent and the respondent has complied with the order – the Court may consider the respondent's compliance with the order.
- Subsection (3) goes on to state that the Court must not refuse to make a protection order merely because the respondent has complied with an intervention order previously.

# Necessary or desirable – principles of Act

- Section 4 of the Act outlines the principles for the Act.
- The Act is to be administered under the principle that the safety, protection & wellbeing of people who fear or experience domestic violence, including children, are paramount.
- People who fear or experience domestic violence, including children, should be treated with respect and disruption to their lives should be minimised.
- To the extent that it is appropriate and practicable, the views and wishes of people who fear or experience domestic violence should be sought before a decision affecting them is made under the Act.
- Perpetrators of domestic violence should be held accountable for their use of violence and its impact on other people and, if possible, provided with an opportunity to change.

# Necessary or desirable – principles of Act (cont.)

- If people have characteristics that may make them particularly vulnerable to domestic violence, any response to the domestic violence should take account of those characteristics.
  - Examples of people who may be particularly vulnerable to domestic violence:
    - Women
    - Children
    - Aboriginal people & Torres Strait Islanders
    - People from a culturally or linguistically diverse background
    - People with a disability
    - People who are lesbian, gay, bisexual, transgender or intersex
    - Elderly people
- In circumstances in which there are conflicting allegations of domestic violence or indications that both persons are committing acts of violence, including for their self-protection, the person who is most in need of protection should be identified.
- A civil response under this Act should operate in conjunction with, not instead of, the criminal law.



# Necessary or desirable

- The Domestic and Family Violence Protection Act Benchbook provides useful case law regarding the meaning of ‘necessary or desirable’.
- Armour v FAC [2012] QMC 22  
[15] “A court may find it desirable to make an order without finding it to be necessary. One example might be where a perpetrator of domestic violence needs to be held accountable.”  
[16] “A court may find it necessary to make an order without finding it to be desirable. One example might be where a court finds it necessary despite the wishes of the aggrieved who stands opposed to the making of an order.”

# Necessary or desirable

- MDE v MLG & Queensland Police Service [2015] QDC 151
  - Morzone QC DCJ states at [55] that the necessary or desirable element requires a 3 stage process:
    - “Firstly, the court must assess the risk of future domestic violence between the parties in absence of any order.”
    - “Secondly, the court must assess the need to protect the aggrieved from that domestic violence in the absence of any order.”
    - “Thirdly, the court must then consider whether imposing a protection order is necessary or desirable to protect the aggrieved from domestic violence.”
    - “Finally, if the court is satisfied of the other pre-conditions of a relevant relationship and domestic violence are established, the court may exercise its discretion to make a protection order imposing appropriate prohibits or restrictions on the behaviour of a respondent necessary or desirable to protect the aggrieved from domestic violence.”
- Morzone QC DCJ provides further comments regarding each stage – see the Judgment at para [55].

# Necessary or desirable

- ACP v McAulliffe [2017] QDC 294
  - Horneman-Wren SC DCJ considered the 3 stage process outlined by Morzone QC DCJ.
  - [68] “In my respectful opinion, whilst Morzone QC DCJ identified a three stage process which his Honour considered satisfaction under section 37(1)(c) required, his Honour’s decision should not be understood to mandate those particular stages or steps. As his Honour observed at para [52]:
    - “The use of the phrase ‘necessary or desirable’ invokes a very wide and general power, and should be construed in a similarly liberal manner to enable a court to properly respond, and, if appropriate, tailor an order to protect a person from domestic violence.”
  - [69] “The requirement under s37(1)(c) that the court be satisfied that the protection order is necessary or desirable itself confers a discretion. It is a discretionary determination to be made in the exercise of a further discretionary decision: whether to make a protection order.

# Duration of protection order

- See section 97.
- A protection order continues in force until:
  - The day stated by the Court in the protection order; or
  - If no day is stated, the day that is 5 years after the day the order is made.
- The Court may order that the protection order continues in force:
  - For any period the Court considers is necessary or desirable to protect the aggrieved from domestic violence or a named person from associated domestic violence; but
  - For a period of less than 5 years only if the Court is satisfied that there are reasons for doing so.
- When deciding the duration the paramount principle is the that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, is paramount.
- If the Court makes an order for less than 5 years, the Court must given reasons for making the order.

# When can the Court make a temporary protection order?

- See section 45 of the Act.
- The Court may make a temporary protection order against the respondent only if the Court is satisfied that:
  - A **relevant relationship** exists between the aggrieved & respondent; and
  - The respondent has **committed domestic violence** against the aggrieved.

**However, there is an additional requirement if the temporary protection order is sought before service...**

- See Section 47 of the Act.
- The Court may only make that order if the Court is satisfied that the making of a temporary protection order **despite the respondent having not been served with the application is necessary or desirable to protect** the aggrieved, or another person named in the application, from domestic violence.



# Making an order by consent

- See section 51 of the Act.
- If the parties consent to the making of an order, or the variation of an order, the Court may make the order:
  - If the Court is satisfied that a relevant relationship exists; and
  - Without being satisfied as to any matter mentioned in section 37(1)(b) or (c) (re final order) or section 45(1)(b) (re temporary order); and
    - Meaning that the Court need not be satisfied that there has been DV or that the order is necessary or desirable (in the case of a final order) or that there has been DV (in the case of a temporary order).
  - Whether or not the respondent admits to any or all of the particulars of the application.
- Note: subsection (2) regarding a child respondent – the Court may only make an order if satisfied of the requirements under section 37 or 45 (as applicable, depending on whether it is a final or temporary order).
- The Court can refuse to make or vary an order by consent if the Court believes that doing so may pose a risk to the safety of the aggrieved, named person or any child affected by the order.



# Naming child

- See sections 53 – 55 of the Act.
- The Court may name in a domestic violence order, a child of the aggrieved or a child who usually lives with the aggrieved, if the Court is satisfied that naming the child is necessary or desirable to protect the child from:
  - Associated domestic violence; or
  - Being exposed to domestic violence committed by the respondent.
- **Remember** – section 9 defines ‘associated domestic violence’ and section 10 defines when a child is exposed to domestic violence.
- Associated domestic violence against a child is basically defined as domestic violence against the child.
- A child is considered to have been exposed to domestic violence if the child sees or hears domestic violence or otherwise experiences the effects of domestic violence.

# Naming associate or relative

- See section 52 of the Act.
- The Court may name in a domestic violence order, a relative or associate of the aggrieved if the Court is satisfied that naming the relative or associate is necessary or desirable to protect that person from associated domestic violence.
- **Again, remember** – section 9 defines ‘associated domestic violence’.
- Associated domestic violence against a relative or associate is basically defined as domestic violence against that person.
- A child is considered to have been exposed to domestic violence if the child sees or hears domestic violence or otherwise experiences the effects of domestic violence.

# Conditions

- See sections 56 - 67 of the Act.
- Mandatory condition which must be on all orders –
  - The respondent must be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved
  - If there is a named adult person – the respondent must be of good behaviour towards the named person and must not commit associated domestic violence against the named person
  - If there is a named child – the respondent must be of good behaviour towards the child and must not commit associated domestic violence against the child and must not expose the child to domestic violence
- Additional conditions may also be included – however only if the Court is satisfied that imposing the condition is necessary or desirable to protect the aggrieved from domestic violence, or a named person from associated domestic violence or a named child from exposure to domestic violence.
- The Court must consider whether to impose an ouster condition in relation to the aggrieved's usual place of residence.
- The Court can include exceptions to conditions.



# What is an ouster condition?

- See section 63 of the Act.
- It is a condition which prohibits the respondent from:
  - Remaining at the premises; and/or
  - Entering or attempting to enter the premises; and/or
  - Approaching within a stated distance of the premises.
- Can include premises:
  - In which the respondent has a legal or equitable interest;
  - Where the aggrieved and respondent live together, or previously lived together;
  - Where the aggrieved or named person lives, works or frequents.
- Section 64 outlines the additional considerations for the Court when determining whether to make an ouster condition in relation to the aggrieved's usual residence.
- Section 65 requires the Court to consider imposing a return condition if an ouster condition is made – allowing the respondent to return to collect stated personal property or to remain at the premises to remove stated personal property.

# What happens with cross applications?

- See Division 1A, sections 41 – 41 of the Act.
- Cross application is a 2<sup>nd</sup> application made where the person named to the 1<sup>st</sup> application is the aggrieved to the 2<sup>nd</sup> application & the aggrieved to the 1<sup>st</sup> application is the respondent to the 2<sup>nd</sup> application.
- Section 41B requires the parties to disclose cross applications to the Court.
- Section 41C requires the Court to hear the applications together, unless the Court considers that it is necessary to hear the applications separately for the safety, protection or wellbeing of the person named as the aggrieved in the original application, the original protection order or the cross application.
- **Remember** – Section 4 (principles of the Act) states that the person who is most in need of protection should be identified where there are conflicting allegations or indicates that both are committing domestic violence.

# Intervention orders

- See Division 6, Part 3 of the Act.
- Intervention order requires that the respondent attend either or both of:
  - An approved intervention program provided by an approved provider;
  - Counselling provided by an approved provider.
- Can only be made with the agreement of the respondent.
- After the order is made, the Court provides a copy to the approved provider, who must assess the respondent's suitability to participate, taking into consideration:
  - The respondent's character, personal history and language skills;
  - Any disabilities, psychiatric or psychological conditions, or alcohol or drug problems of the respondent;
  - The effect of the above matters on the respondent's ability to participate in group counselling;
  - Any other relevant matters.
- If the respondent is deemed unsuitable, the provider must give the Court and Police a notice stating the respondent is not suitable.



# Intervention orders

- If the respondent breaches the intervention order, the provider must give the Court and Police a notice outlining the date and nature of the contravention, unless the breach is minor and the respondent takes steps to remedy the contravention or has otherwise substantially complied with the order.
- Upon completion of the program or counselling, the provider must give the respondent, Court and Police a notice of their completion.



# Family law orders

- Section 77 of the Act requires a person who applies for a domestic violence order, or a variation, to inform the Court of the existence of a family law order and provide a copy of the order, if they are aware of the order.
- Under section 78, the Court must have regard to any family law order (which the Court is aware of) and, if the order allows contact between the respondent and a child that may be restricted under the proposed domestic violence order or variation, the Court must consider whether to exercise its power under the *Family Law Act 1975* (Cth) to revive, vary, discharge or suspend the family law order.
- If the Court is considering whether to do so, the parties must have a reasonable opportunity to present evidence and make submissions about the exercise of this power (except in the case of a decision to make a temporary protection order).

# Variation of domestic violence orders

- See Division 10 of Part 3 of the Act.
- A final or temporary order can be varied.
- A variation application can be made by the aggrieved, respondent, named person, authorised person for the aggrieved, a person acting under another Act for the aggrieved/respondent/named person or a police officer.
- Can seek to vary any aspect of the order, for example:
  - A condition of the order
  - The duration of the order
  - The persons named in the order
- However, a named person can only seek a variation regarding themselves (ie the naming of that person or a condition relating to them).
- Form DV4 – Application to Vary a Domestic Violence Order  
[https://www.courts.qld.gov.au/\\_\\_data/assets/pdf\\_file/0017/162170/dva-f-4.pdf](https://www.courts.qld.gov.au/__data/assets/pdf_file/0017/162170/dva-f-4.pdf)

# Temporary protection order – variation application

- See section 48 of the Act.
- The Court may make a temporary protection order if the Court adjourns an application to vary an existing domestic violence order only if the Court is satisfied that the temporary protection order is **necessary or desirable to protect** the aggrieved, another person named in the first order and/or a person sought to be named on the order under the current variation application, from domestic violence or associated domestic violence, pending a decision.

# Costs

- See section 157 of the Act.
- Each party must bear their own costs.
- However, the Court may award costs against a party who makes an application that the Court hears and decides to dismiss on the grounds that the application is malicious, deliberately false, frivolous or vexatious.

# Important points from this webinar

- Make use of the Act, Rules and Regulations!
- Read the Benchbook!
- Remember the principles of the Act – section 4.
- **Importantly** – a client who seeks advice about a domestic violence matter is likely to have legal and non-legal issues/matters – make appropriate referrals to domestic violence services, financial counsellors, counsellors/psychologists/psychiatrists, mediation services, Centrelink, housing/accommodation services etc.
- Today's webinar provided an overview of the domestic violence legislation in QLD, however there are many other important aspects of the legislation and the Court process (eg the respondent's options, contraventions, evidence at hearing, impact of an order on weapons license and parenting proceedings etc). For lawyers not practicing in this area, it's important to seek further training and guidance around those matters/issues.





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**Thank you.**

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