

Domestic Violence Protection Orders

A Domestic Violence Protection Order is designed to protect you, your children and other people named on the order from a person who is violent towards you. The order can have specific conditions to stop behaviour that impacts you and makes you unsafe.

A Domestic Violence Protection Order is a civil matter and will not appear on a person's criminal record, unless they disobey the order in which case they may be brought back to court to face criminal charges of breaching an order.

The court will make a Domestic Violence Protection Order if it accepts that:

- An act or acts of domestic or family violence have occurred
- The people involved are in a type of relationship that is defined in the law as
 - o An intimate personal relationship (married, de facto, engaged, dating, registered relationship)
 - o A family relationship (parent, former parent, relative etc.)
 - o An informal care relationship (where one person is dependent on the other person for help in daily living activities, but is not paid for this other than a Centrelink Carer's Allowance)
- The court believes a Domestic Violence Protection Order is necessary or desirable in your situation

The order will refer to the person who is perpetrating violence as **'the respondent'** and to the person who is experiencing the violence as **'the aggrieved'**. The person who is asking for the order is called **'the applicant'**.

DVPO Conditions

All Domestic Violence Protection Orders will contain the conditions that:

The Respondent must be of good behaviour towards the aggrieved (and any other named persons) and not commit domestic violence.

An order can also include some or all of the conditions below to best suit your personal situation.

- The respondent is not to go to, enter or remain in any place where the aggrieved and persons named on the order are living, staying or working
- The respondent is not to contact, try to contact or ask someone else to contact the aggrieved and persons named on the order either directly or indirectly
- The respondent is not to follow or approach to within (a distance can be entered here – often 100m) of the aggrieved and persons named on the order.
- That one party allow the other to collect specific property from a premises. This may be ordered to be in the presence of a police officer.
- Other. The aggrieved may have a special request relating to their circumstances, which the court may or may not accept

Applying for a DVPO

Private Application

You can make an application for a protection order or to vary the conditions on an existing protection order yourself. **We strongly advise you to get the police or a domestic violence support service, such as Community Action to help you to do this.** Knowing what information to include in your application can be difficult when you are feeling traumatised by domestic or family abuse.

The application for a domestic violence order (Form DV1) can be obtained from the local Magistrates Court, police station or online from the Queensland Courts website www.courts.qld.gov.au. There is no filing fee. Once the application is filed with the court, a date for the hearing of the application will be fixed and the court will provide the application to police to serve to the person against whom the order is made.

If you make the application yourself, it is compulsory for you to attend all court mentions or hearings. If you have safety concerns about attending, or have reasons why you are unable to attend on the specified date, you can apply to the court in writing to request an adjournment or other measures to protect your safety. See the section further on in this book about Safety and Support for further information.

Police Application

If the police are called to an incident of domestic violence they can issue a Police Protection Notice on the spot. This can include conditions that will apply until the matter is heard in court.

Even if the police have not attended an incident, you can still go and talk to them about domestic violence you are experiencing. If police believe your safety is at risk they may apply for a DVPO or a variation to an existing DVPO on your behalf. In this case they will complete all paperwork and present the case to the court, although you will usually still be asked to attend the court.

Applying through an authorised person

You can give someone else authority to apply for an order on your behalf. This could be a support worker, a relative or a friend. If someone else is appointed your guardian or has Enduring Power of Attorney over your affairs they can also apply for a DVPO on your behalf.

Young People as Applicants

A person under the age of 18 who is experiencing domestic violence can apply for a domestic violence order in certain circumstances. Young people can apply for an order if they are in an intimate personal relationship or an informal care relationship, but not a family relationship.

This means that children under the age of 18 cannot apply for a domestic violence order against their parents. Young people needing support with abusive parents should be referred to other agencies such as the Department of Child Safety, Youth and Women.

Cross Applications

Sometimes both parties involved in domestic violence apply for domestic violence protection orders against each other. In this case a court will make arrangements for both applications to be heard together.

If you are named as the Respondent

All women and children caught up in domestic or family violence in the Gympie region can access support from Community Action, regardless if they are named as the aggrieved or the respondent in a DVPO application. Sometimes women who are having violence used against them are named as a respondent in an order (this can be a form of abuse in itself). If you feel this has happened to you, talk to the police, a court support worker or call Community Action on 5413 8088 to explore your options and plan for your safety.

Safety and Support at Court

For many women experiencing domestic abuse, seeking legal protection to end the abuse can increase the risk of violence. If you feel there will be a safety risk for you in applying for a protection order and/or attending court, you can identify this to court staff at the time of submitting your application, and there are a range of measures they can take.

If the respondent does not know your current address, you can complete an **Aggrieved Confidential Address Recording Court Form**. This will make sure that no details of your address appear on the paperwork that is provided to the Respondent.

If you feel unsafe about attending court when the respondent will be there, you can complete a **Domestic and Family Violence – Court Safety Form**. This will identify what you are concerned about and what measures the court plans to take to address your concerns.

At court there is a **safe room** where you can sit away from the public waiting room, and with court support practitioners. You can call Community Action and organise to be escorted to the safe room well before the start of court so as to minimise the chance of an encounter with the respondent.

Court support Program

Community Action provides court support workers to Gympie Domestic Violence Magistrate's Court every week. Our Court Support practitioners will greet you when you arrive, escort you to the safe room and provide you with information about the court process. We can go into court with you and make sure the court is aware of all of the information that is important to the application that concerns you.

There is also a Men's Court Support practitioner who will provide information about the legal process to men who are appearing at Domestic Violence Court.

Court can feel overwhelming. If you are feeling the need of information and support to manage your court experience you can contact Community Action in advance on 5413 8088 and talk to a Court Support Practitioner, or you can arrive promptly at 8:30am on the day your matter is scheduled for court, so that you can talk to a practitioner before other people arrive.

Always try to bring a copy of your application for a Domestic Violence Protection Order with you to court. This will enable the Court Support practitioners to provide the best possible support to you and to help you to plan for your ongoing safety.

Interpreters

If you need an interpreter in the court you can ask for this when you lodge your application, or when you attend court for a mention. If English is not your first language, an interpreter can help you understand unfamiliar court language and procedures.

Making a Self Application for a DVPO

When you complete the Application for a Domestic Violence Protection Order you need to provide as much detail as possible. You should describe every domestic violence incident that has occurred starting with the most recent.

- **What happened** – be really specific.
Instead of “he used physical violence” say “He pushed me over and then dragged me along the floor by my hair”. Instead of “He verbally abused me” say “He shouted at me that I was a ‘stupid cunt’ and he was going to get the kids taken away from me”.
- **When it happened** – give a date and time if you remember, or an approximate timeframe – e.g. “The first week of July”. How frequently has it happened? e.g. “On at least 4 occasions” or “Every week when I drop off the children for a contact visit”.
- **Where it happened** – name the place
- **Who was there** – name any witnesses to the abuse, or anyone that you told immediately after it happened.
- **Any injuries sustained** – If you visited your GP or an emergency department you can get a report to verify your injuries. If you have pictures of your injuries these can be submitted as evidence for your application.
- **How you felt** – e.g. scared, threatened etc.
- **Your Concern for the future** and reason for seeking the protection order. Be specific about what you think will happen if you don’t get a protection order.

If there have been more serious incidents in the past, so that you have reason to believe that you may be at risk of greater injury in the future you should include this information. If the Respondent has had DVPOs issued against them in the past you should also include this information.

Consider what conditions you will need to keep yourself, and/or others such as children or other family members safe. Make sure you ask for these. The application form asks you whether you want a Temporary Protection Order whilst you are waiting for the Final Order. You should always ask for this, so that you receive immediate protection.

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You should include evidence with your application. This can include:

- Photos of any injuries sustained (date stamped if possible)
- Photos taken later when injuries such as bruising are more visible
- Statements from witnesses who saw or heard an incident, or whom you have confided in over time
- Diary entries you have made
- Doctor's reports
- Other court orders – Family Law or DVPOs
- Reports from counsellors
- Copies of texts, voicemail messages, emails, social media etc. (with dates)

Sign the application in front of court staff in the court room, then lodge the application at the counter of the Courthouse.

You can get forms to apply for or vary an order at <https://www.courts.qld.gov.au/going-to-court/domestic-violence/forms>

What Happens at Court

Mention

The first time your application for a DVPO or variation to a DVPO is heard is called a mention. If the respondent has not yet been served with the documents and court date, the magistrate will adjourn the matter to a later date, generally 2-3 weeks away. The magistrate will consider the information you have provided in your application and if the behaviour you are alleging meets the criteria for domestic violence outlined in the legislation then a Temporary Protection Order will be issued. This will provide exactly the same legal protection as a long term DVPO and will usually last until the court has made a decision about granting a final order.

If you are granted a Temporary Protection Order, the Respondent will be bound to abide by the conditions listed in it, but not until they have been served with the paperwork by police so that they know what it is they are supposed to do or not do. This means you cannot report a breach of the order until after the Temporary Protection Order has been served.

If the respondent has been served and is present, then the magistrate will ask the respondent to choose one of the following options:

- **Consent without admission**
This means they are agreeing to having the order made, but not admitting to all of the allegations made against them in the application.
- **Adjourn the matter**
This means the mention will be put off for usually 2-3 weeks whilst the respondent seeks legal advice.
- **Contest the order**
This means that they do not agree to the order being made or to the allegations in the application. When the respondent contests the order the Magistrate will set down a date for a hearing about the application. Generally, the Magistrate will either issue a Temporary Protection Order, or continue an existing Temporary Protection Order until matter is heard.

If the respondent *has* been served with the documents and court date, but has not attended court for the mention, the magistrate can choose to adjourn or to make the orders that you, or the police have asked for.

Submitting your Evidence

If the Respondent does not consent to the order (with or without admission), the matter will be scheduled for hearing. The magistrate will ask you to submit any evidence you have to support what you are saying in your application. **It is important that you submit 3 copies of each piece of evidence on or before the date the Magistrate tells you at the Mention.** This could include an affidavit from you about the violence, evidence from anyone who witnessed the violence, and supporting evidence such as photos or emails. If your evidence includes affidavits from witnesses these must be written on a DV25 form that you can get from the Courthouse or from www.courts.qld.gov.au . The person making the affidavit will then need to sign it before a Commissioner for Declarations or Justice of the Peace.

The respondent will be given a copy of this material (with your address suppressed if you have asked for this). The Respondent will then have a date by which they must reply in writing to the evidence you have produced. You will receive a copy of his responses. Once there has been an exchange of documents, you both go back to court for a **Hearing Review** where the Magistrate will ask each party if they want the matter to proceed to a hearing.

Community Action – Gympie Region Domestic & Family Violence Service can support you to prepare evidence for a domestic violence hearing if you ask for this in plenty of time before your hearing is scheduled. The Magistrate will usually ask you how long you will need to prepare your evidence. If you would like support, please request at least 4 weeks. You can contact us on 5413 8088 to make an appointment.

Domestic Violence Hearing

At the hearing the Magistrate will listen to the evidence provided by you and by the Respondent and make a decision about whether one or more acts of domestic violence have occurred and whether to issue the order with the conditions you have requested. If there has been a breach of the Temporary Protection Order whilst you are awaiting hearing you should report this to the police (see the next section) and let the court know about this.

You and any witnesses will need to attend court in person and answer any questions from the magistrate and the respondent's solicitor. You can ask the court to be allowed to attend via video-link or from behind a screen. It is up to the court whether this will be allowed.

If you disagree with the Magistrate's decision you can appeal it. If you decide to do this, you may seek legal support.

Breaches of a Domestic Violence Protection Order

A breach of a DVPO is when the Respondent personally, or through another person, disobeys the conditions on the order. For example, if the order contains the condition not to approach within 100 metres of your place of residence or work, and the respondent comes to your house, that is a breach of the Protection Order. If a respondent is ordered not to contact you by any means, or to get a third party to contact you, and they send you texts about how sorry they are for the misunderstanding between you, that is a breach of the Protection Order.

Reporting Breaches

It is critical to your safety and ongoing wellbeing that all breaches be reported to the Police.

Familiarise yourself with the conditions on your DVPO. If possible, provide copies of your DVPO to family, school/daycare (if appropriate) or trusted people to assist with reporting breaches. The following suggestions may assist in reporting breaches:

1. Record and/or save details of breaches e.g. Text messages, emails, Facebook etc
2. keep a diary of breach occasions including dates, times, witnesses etc
3. Call 000 for all emergencies
4. Contact your closest Police station to provide details of the breach. You may be required to make a formal statement, which you can request a copy of for your records
5. Make note of the Police Officer's name and number and the date and time of your interaction with them

Breaching a DVPO is a criminal offence. Police Prosecutions are responsible to represent the matter in a criminal court. A successful court outcome requires evidence. Breaches

are prosecuted in the criminal court, and the police will not necessarily keep you informed whilst criminal charges are being investigated

In the event a breach criminal charge is processed through a Magistrate's court, you may be required to give evidence by providing statements, copies of saved photos or text messages etc and to attend court proceedings. For this reason, it is important to stay in contact with Police Prosecutions.

The outcome of a breach charge will vary depending on the nature and severity of the breach. It may include a monetary fine or jail time. A Respondent generally needs to be charged several times before being sentenced to jail.

If you are unsatisfied with Police response to a breach, you may consider attending another Police station to report the matter or asking to speak to the Domestic Violence Liaison Officer or Officer in Charge.

Applications to Vary a Domestic Violence Protection Order

When your circumstances change, for example, you leave the relationship, or you and the Respondent decide to live together again, or the respondent's behaviour changes, you may find that you need to change the conditions of your DVPO.

You can apply to the court to change the time span, conditions or named persons on an existing DVPO. You use a *DV 4 Application to Vary a Domestic Violence Protection Order* to do this. You can get this form from the courthouse or download it at www.courts.qld.gov.au

The matter will go back through the process of mention and hearing. The Magistrate will decide, based on the evidence provided, whether to grant the variation you have asked for.

If you are asking for a reduction in the conditions – for example, that you and the Respondent be allowed to live together again, the Magistrate will need to be convinced that your safety will not be at risk. If the police made the application for the original order, the police prosecutor will be asked whether the police have information about the safety risks that can inform the Magistrate's decision.

If you are asking to increase the conditions or to add additional people to the order, such as children, you will need to provide evidence that an order is required to protect your or other's safety, in the same way as for the original application.

The court may give you the option to add “unless I give permission to vary this condition in writing”. This means that you can waive a condition in writing (by letter, text or email), for example that the respondent cannot approach within 100 metres of you, but reinstate that condition by advising in writing that the condition is once more in effect if at any point you become concerned for your safety and wellbeing.

It is a really good idea to get advice and support to apply for a variation for a Domestic Violence Protection Order. Community Action can help you to draft and submit your application.