

UNDERSTANDING DOMESTIC VIOLENCE

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WHAT IS DOMESTIC VIOLENCE?

The legal definition of Domestic Violence includes behaviour much wider than just physical violence. In Queensland, domestic violence includes:

1. wilful injury;
2. wilful damage to property;
3. intimidating or harrasing behaviour;
4. indecent behaviour without consent; or
5. any threat to do any of the above.

WHAT IS A PROTECTION ORDER?

Protection Order Applications are made through the Magistrates Court of Queensland. The Court can make a Protection Order if the Court is satisfied that an act of Domestic Violence has occurred and it is likely to happen again (of if there was a threat, that the threat is likely to be carried out).

The effect of a Domestic Violence Order is for the "Respondent" (the alleged perpetrator) to be "of good behaviour". The Order can also impose a distance provision, whereby the "Respondent" must not approach the Applicant (the aggrieved). The essence of a Domestic Violence Order is to keep parties apart from each other, and to prevent further incidents occurring.

WHO CAN APPLY FOR A DOMESTIC VIOLENCE ORDER?

To apply for a Protection Order, the relationship between the (2) parties must come under one of the following categories:

- (a) married or de facto couples;
- (b) an intimate personal relationship (such as a dating relationship);
- (c) a family relationship; or
- (d) an informed care relationship.

The application can be initiated by an "Aggrieved" party themselves, or a Solicitor, or the Police.

IS "DOMESTIC VIOLENCE" THE SAME AS "FAMILY VIOLENCE" IN THE FAMILY COURT?

Similar, but not the same. Under the Family Law Act, "Family Violence" in children's proceedings includes conduct (whether actual or threatened) towards a member of a family which causes a member of the persons family to reasonably fear for his or her personal wellbeing or safety.

This means the Family Court applies an 'objective test' i.e. it therefore needs to satisfy itself on the evidence, that violence has occurred. This means that the Family Court will not just accept that violence has occurred if there is a State Domestic Violence Order, that has been made "by consent, but without admission". The Family Court however, will give significant weight to a finding that Family Violence has occurred, if a Final Hearing has occurred in the State Magistrates Court and (after considering the evidence) the State Court has made an Order based on a 'finding' of Domestic Violence.

Each State has its own Laws in relation to Domestic Violence Protection Orders. The *Family Law Act* is applies Australia-wide. Inter-state Domestic Violence Orders can be registered in the Queensland State Magistrates Court.