

LEGAL GUIDE TO DOMESTIC VIOLENCE PROTECTION ORDERS IN QUEENSLAND

Introduction

Technology-facilitated stalking and abuse is the use of technology (such as the internet, social media, mobile phones, computers, and surveillance devices) to stalk and perpetrate abuse on a person.

Such behaviour includes:

- Making numerous and unwanted calls to a person's mobile phone
- Sending threatening and/or abusive messages (text messaging, WhatsApp, Snapchat, Facebook messaging, Twitter)
- Hacking into a person's email or social media account to discover information about them
- Hacking into a person's email or social media account to impersonate them and send abusive messages to family/friends of that person
- Using surveillance devices to spy on a person
- Using tracking devices to follow a person
- Sharing, or threatening to share, intimate pictures of a person

This legal guide is one of a set of four guides that looks at areas of law relevant to people experiencing technology-facilitated stalking and abuse.

Legal Guide to Domestic Violence Protection Orders in QLD

This guide looks at how people can obtain protection orders from the court to protect them from technology-facilitated stalking and abuse. In Queensland these protection orders are called **domestic violence protection orders (DVOs)**.

For information on other areas of law see:

Legal Guide to Surveillance Legislation in QLD

This guide looks at what the law says about surveillance devices, when it is an offence to use them and what the restrictions are on sharing information/videos/pictures obtained through the use of surveillance devices.

Legal Guide to Relevant Criminal Offences in QLD

This guide looks at the various criminal offences that may apply to a person who is perpetrating technology-facilitated stalking and abuse.

Legal Guide to Image-Based Abuse Legislation in QLD

This guide looks at what the law says about image-based abuse, when it is an offence to record or distribute intimate images and what legal options exist for victims of image-based abuse.

Language

‘Victim’ vs ‘Survivor’

Some women who are experiencing, or who have experienced, domestic violence use the term ‘victim’ of domestic violence to describe themselves. Others believe the term ‘survivor’ of domestic violence more accurately reflects their experience. Whilst acknowledging that each woman’s experience is unique and individual to her circumstances, for consistency, these guides will refer to women who are experiencing, or who have experienced, domestic violence as ‘victims’ of domestic violence.

Gender

While domestic violence can happen in many circumstances, in the vast majority of reported domestic violence cases men are the perpetrators and women the victims. For this reason these guides use ‘he’ to refer to perpetrators and ‘she’ to refer to victims. This is not intended to exclude other situations.

Terminology

Criminal Offence (or offence)

A criminal offence is a offence against the State. It is commonly referred to as ‘breaking the law’.

Summary offence

Less serious offences (such as parking violations), are known as summary offences. Summary offences normally have a maximum penalty of no more than 12 months imprisonment or are not punishable by imprisonment at all.

Indictable (serious) offence

More serious offences (such as murder, manslaughter, sexual assault) are known as indictable offences. Indictable offences are punishable by imprisonment exceeding 12 months.

Charge

When a person is charged with an offence, it means that the police have formally accused that person of committing an offence.

Conviction

When a person is convicted of an offence, it means that person has either pleaded guilty to committing the offence, or a court has found that person guilty of committing the offence.

Penalty unit

Criminal legislation usually describes the amount payable for a fine in a “penalty unit”. Penalty units are used instead of dollar amounts because the rate for penalty units is indexed for inflation and may change from time to time. The Penalties and Sentences Regulation 2015 (QLD) states the dollar amount for one penalty unit. As of 1 July 2018, one penalty unit = \$130.55. Therefore, an offence with a maximum penalty of a fine of 50 penalty units will have a maximum fine of \$6,527.50.

DOMESTIC VIOLENCE PROTECTION ORDERS

The *Domestic and Family Violence Protection Act 2012* (Qld) (the "Act") is the piece of legislation in Queensland that allows the courts to make orders protecting people from domestic and family violence.

A person who is experiencing domestic violence (the 'aggrieved') may apply to the Magistrates Court of for a Domestic Violence Protection Order ('DVO') or have a DVO made by the police. A DVO can protect a person by ordering the person against whom the DVO is made ('respondent') not to commit further acts of domestic violence against the aggrieved.

It is important to note that a DVO is a *civil* order, meaning it is not a criminal charge. However, an application for a DVO may be accompanied by related criminal charges and criminal penalties may apply if a DVO is breached.

The Magistrates Court may grant a DVO against the respondent for the benefit of the aggrieved if it is satisfied that:

- a *relevant relationship* exists between the aggrieved and the respondent; and
- the respondent has committed domestic violence against the aggrieved; and
- the DVO is necessary or desirable to protect the aggrieved from domestic violence.

Where can I find this information in the Act?

See section 37 of the Act

Can technology-facilitated stalking and abuse be a form of domestic violence?

Yes, technology-facilitated stalking and abuse may be a form of domestic violence.

Technology-facilitated stalking and abuse can be a form of domestic violence if there is a *relevant relationship* between the respondent and aggrieved, and the respondent's behaviour is *emotionally or psychologically abusive, threatening, coercive*, or in any other way *controls or dominates* the aggrieved and *causes the aggrieved to fear* for her safety or wellbeing or that of someone else. A relevant relationship exists where there is, or has been, an intimate personal relationship, or a family relationship, or an informal care relationship between the respondent and aggrieved (see section 1.2 below for more information).

Emotional or psychological abuse means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person. A relevant example provided by the Act is repeatedly contacting a person by telephone, SMS message, email or social networking site without the person's consent. See section 11 of the Act for further examples.

The Act includes some examples of technology-facilitated domestic violence:

- threatening to cause personal injury to a person, damage a person's property, deprive a person of their liberty, commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed or cause the death or injury of an animal
- threatening a person with the death or injury of the person or someone else
- unauthorised surveillance of a person
- unlawfully stalking a person

Note: domestic violence includes the unauthorised surveillance or the unlawful stalking of a person.

Unauthorised Surveillance

The *unauthorised surveillance* of a person means the unreasonable monitoring or tracking of the person's movements, activities or interpersonal associations without the person's consent, including, for example, by using technology.

Examples provided in the Act of surveillance by using technology:

- reading a person's SMS messages
- monitoring a person's email account or internet browser history
- monitoring a person's account with a social networking internet site
- using a GPS device to track a person's movements
- checking the recorded history in a person's GPS device

See section 8(5) of the Act for more information.

Unlawful Stalking

Unlawful stalking has a specific meaning, defined in section 359B of the *Criminal Code Act 1899* (Qld).

Four elements make up the conduct of *unlawful stalking*:

1. It is intentionally directed at a person ('stalked person'/'aggrieved').
2. It is engaged in on more than one occasion. Or, if the conduct lasts for a long time, it is engaged in on any one occasion.
3. It consists of one or more particular behaviours (see below).
4. It causes actual detriment to the aggrieved and it is reasonable in all the circumstances for the detriment to arise.

Particular behaviours related to technology-facilitated stalking:

- contacting a person in any way, including, for example, by telephone, mail, fax, email or through the use of any technology
- leaving offensive material where it will be found by, given to or brought to the attention of, a person (e.g. posting offensive material on the aggrieved person's Facebook wall)
- giving offensive material to a person, directly or indirectly (e.g. emailing offensive pictures to the aggrieved person)
- an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence
- an act of violence, or a threat of violence, against, or against property of, anyone, including the respondent

Detriment may include the following:

- apprehension or fear of violence to, or against property of, the aggrieved or another person
- serious mental, psychological or emotional harm
- prevention or hindrance from doing an act a person is lawfully entitled to do
 - For example, a person no longer walks outside the person's place of residence or employment or a person significantly changes the route or form of transport the person would ordinarily use to travel to work or other places
- compulsion to do an act a person is lawfully entitled to abstain from doing
 - For example, a person sells a property the person would not otherwise sell

Where can I find this information in the Act?

See sections 5, 8, 9, 10, 11 and 12 of the Act for more information about what behaviour constitutes domestic violence. Also see sections 359A and 359B of the *Criminal Code Act 1899* (Qld) for more information on unlawful stalking.

When is there a relevant relationship between the aggrieved and respondent?

A *relevant relationship* is defined as:

- an intimate relationship
- a family relationship
- an informal care relationship

An *intimate relationship* is a spousal, engagement, or couple relationship.

A *family relationship* exists between two relatives. A *relative* of a person is someone who is ordinarily understood to be, or to have been, connected to the person by blood or marriage. *Relative* includes a spouse, child (including an adult child), stepchild, parent, step-parent, sibling, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law.

The Act also recognises that certain groups of people may have a wider concept of a relative such as Aboriginal people, Torres Strait Islanders, members of certain ethnic communities, and people with particular religious beliefs.

An *informal care relationship* exists between two people if one of them is, or was, dependent on the other person (the carer) for help in an activity of daily living (e.g. dressing or personal grooming, preparing meals, etc.). It does not include commercial arrangements, whether paid or unpaid.

See the Act for comprehensive definitions of:

- spousal relationship (s 15)
- parent (s 16)
- engagement relationship (s 17)
- couple relationship (s 18)
- family relationship and relative (s 19)
- informal care relationship (s 20)

Where can I find this information in the Act?

Please see sections 13–20 of the Act.

Who can apply for a Domestic Violence Protection Order?

An application for a DVO may be made by the aggrieved person or a police officer who, after investigation, reasonably believes that domestic violence has been committed against the aggrieved.

The Act also allows for certain other authorised people to make an application on behalf of the aggrieved. See section 25 of the Act for more information.

Where can I find this information in the Act?

See sections 25 and 32 of the Act.

How can a Domestic Violence Protection Order protect a person from technology-facilitated stalking or abuse?

All DVOs contain the standard condition that the respondent must be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved ('the standard conditions').

Other than the standard conditions, the court may also impose other conditions that it considers necessary or desirable to protect the aggrieved (or any other named person on the DVO).

Some conditions that the court may impose on the respondent, which relate to technology-facilitated stalking and abuse are conditions that:

- prohibit stated behaviour of the respondent
 - that would constitute domestic violence against the aggrieved
 - that is likely to lead to domestic violence against the aggrieved

- prohibit the respondent from
 - contacting, attempting to contact or asking someone else to contact the aggrieved
 - locating, attempting to locate or asking someone else to locate the aggrieved if the aggrieved person's whereabouts are not known to the respondent

A respondent **must** follow the conditions of a DVO. If the respondent breaks any of the DVO conditions (called contravening the DVO), it is an offence and the police can investigate and lay charges against the respondent (see below).

The applicant for the DVO can also ask the court to include conditions that are specific to the aggrieved person's situation and which will make the aggrieved feel safe. For example:

Suggested wording to cover image-based abuse situations

The respondent must not directly or indirectly publish, share or threaten to publish or share images or videos of the aggrieved person that are of an intimate nature.

or

The respondent is, within 24 hours, to destroy all intimate images of the aggrieved.

Suggested wording to cover 'tracking/surveillance device' situations

The respondent must not attempt to locate, ask someone else to locate, follow or keep the aggrieved person under surveillance.

Suggested wording to cover technology-facilitated harassment

The respondent is prohibited from using the internet or any communication device (including social networking sites) to communicate with, publish pictures of, or make comments concerning the aggrieved.

Where can I find this information in the Act?

See section 56, 57 and 58 of the Act.

How long does a DVO last?

A DVO continues in force for a period specified by the court, or if no expiry date is stated, for five years from the day after the DVO is made.

The court can order that a DVO continues in force for a period of less than five years only if it is satisfied that there are reasons for doing so.

Where can I find this information in the Act?

See section 97 of the Act.

What if a person is in urgent need of protection?

Temporary protection orders

If the aggrieved is in urgent need of protection, at the time she applies for a DVO she may also ask the court to make a temporary protection order.

A temporary protection order may contain the same conditions as in a final DVO. It usually lasts until the court can hear more evidence and decide whether to make a final order for a DVO or not. A temporary protection order is not enforceable unless the respondent was present in court, or has been served with a copy of the order or told by a police officer about the order.

Where can I find this information in the Act?

See sections 23, 36, 47 and 98, and Part 3 Division 2, of the Act.

Police protection notice

If a police officer reasonably believes that the respondent has committed domestic violence, the officer may issue a *police protection notice* if the officer reasonably believes that it is necessary or desirable to protect the aggrieved from domestic violence.

A police protection notice contains the standard condition that the respondent must be of good behaviour towards the aggrieved and must not commit domestic violence against the aggrieved. It may also include other additional conditions e.g. the respondent may not contact, or attempt to contact, the aggrieved.

A police protection notice is taken to be an application for a DVO by a police officer. It continues in force until:

- the court makes a DVO or a temporary protection order against the respondent; or
- the court hearing an application for a DVO adjourns the hearing without making an order for a DVO or temporary protection order; or
- the application for a final DVO is dismissed.

Where can I find this information in the Act?

See Part 4 Division 2 of the Act.

What if a person breaks the conditions of a DVO by engaging in technology-facilitated stalking or abuse?

When a person does not obey the conditions of a DVO, this is called a **breach** or **contravention** of the DVO.

It is an offence to contravene a DVO or a police protection notice. The maximum penalty is imprisonment for three years or 120 penalty units.

If a respondent has been convicted of contravening a DVO and, within five years, is convicted of contravening a DVO again, the maximum penalty increases to a maximum of five years imprisonment or 240 penalty units.

If the aggrieved person aids, abets, counsels, or procures the respondent to engage in behaviour that contravenes the DVO, the aggrieved person will not have committed an offence.

Where can I find this information in the Act?

See sections 30, 177, 178 and 180 of the Act.

How can a person apply for a DVO?

A person can apply for a DVO in person at their local Magistrates Court or online through the Queensland Courts website.

Alternatively, a person may report the domestic violence to their local police and ask the police to apply for a DVO on their behalf. If after investigation the police officer reasonably believes that domestic violence has been committed, the police officer may apply to the court for a DVO on behalf of that person.

Where can I find this information in the Act?

See section 100 of the Act.

Effect of Domestic Violence Orders interstate

From 25 November 2017, a Domestic Violence Order made in any Australian state or territory is now automatically recognised and enforceable Australia-wide.

A Domestic Violence Order issued prior to 25 November 2017, can be “declared” a *nationally recognised Domestic Violence Order* by any local court in Australia. Find more information about the National Domestic Violence Order Scheme here: <https://www.ag.gov.au/ndvos>.

Gathering evidence to prove technology-facilitated stalking or abuse

Sometimes it can be difficult to prove technology-facilitated stalking or abuse. Some tips for gathering evidence to show a DVO is necessary or DVO has been contravened include:

- Do not delete text messages, voicemail messages, photos
- Try and save any evidence to a computer/USB flash drive
- Use screenshots and save the image as the date & time it was taken. If taking screenshots of websites, always include the URL in the screenshot
- Keep a diary or voice notes of incidents including dates and times
- Consider giving police written permission to access your phone, computer, Facebook, email account etc. if a matter is being investigated

Note: certain conduct in relation to technology-facilitated stalking or abuse may constitute a criminal offence. Please see the *Legal Guide to Image-based Abuse in QLD*, *Legal Guide to Relevant Criminal Offences in QLD* and *Legal Guide to Surveillance Legislation in QLD* for further information.